

# SILENT PARTNER

## Hot Tips for Military Family Law Cases: A Baker's Dozen

*INTRODUCTION: **SILENT PARTNER** is a lawyer-to-lawyer resource for military legal assistance attorneys. It is an attempt to explain broad generalities about the law of domestic relations. It is, of course, very general in nature since no handout can answer every specific question. Comments should be sent to the address at the end of the last page.*

1. DON'T SAVE THE PROPERTY DIVISION CLAIM TILL AFTER THE DIVORCE. In some states the claim must be asserted in pleadings [answer, counterclaim, motion or complaint] before the divorce is granted; otherwise, it's lost. That's an expensive mistake!
2. GET A COURT ORDER FOR ALIMONY OR CHILD SUPPORT if you represent the recipient. Use a voluntary support agreement, a confession of judgment or some other form of court order, even if it means hiring civilian counsel for your client -- so that you'll have the remedies of contempt or garnishment if there's no payment.
3. KEEP A RECORD OF WHAT YOU DO. Outline everything on the computer -- for every client you see. Use "Bullets & Numbering" to set up an outline template. Save your work on the hard drive, then on a disk, flashdrive or other portable storage device, and be sure to back up every night!
4. "FLYING BLIND" IS DEFINITELY NOT A GOOD IDEA. If you don't know what you're doing, **STOP**. You cannot ethically practice law or advise clients if you don't know the law. Either decline the case or associate competent co-counsel -- these are ethical requirements for all JAGs and civilian attorneys. [see Sullivan, "When to Say NO," ABA Legal Assistance Newsletter, April 1984]
5. IF YOU'RE RESERVING PENSION DIVISION, EXPLAIN IT TO YOUR CLIENT. Most clients think reserving pension division means it's secured and they need do nothing more about it. Explain to the clients in plain English [and also write it down for them!] that this merely means that they'll have to get a lawyer when divorce time rolls around to help file the claim in court -- otherwise it's lost! Better yet, send them a certified letter explaining this -- it's all too easy to forget or misunderstand this important point. And remember, most of our clients are not lawyers!

6. **“GOODBYE, ALIMONY” IF IT’S NOT CLAIMED (IN COURT) BEFORE DIVORCE.** An alimony claim in some states must be asserted in the pleadings to be preserved for after the divorce. Make sure you get a lawyer for Mrs. Jones if she’s a dependent spouse; this is an important issue for many military spouses who are mainly homemakers or “Army wives.”
7. **“REASONABLE VISITATION” IS MEANINGLESS IF PARENTS CANNOT AGREE,** Be sure to use a “default solution” involving specific visitation terms if the parties can’t decide on what’s reasonable. That way, if they can agree on visitation, then the “reasonable option” governs -- and if they cannot agree, the noncustodial parent has something to fall back on.
8. **KNOW HOW TO REFER A CLIENT TO A CIVILIAN ATTORNEY.** Contact the state bar or bar association in the city or county where the lawsuit should be filed (or has been filed already). Call the bar association and ask for the staffer who works with the Family Law Section, so you can ask who might handle a “military case” in that state. See “Lawyer Referral... Do’s and Taboos,” in the June 1988 issue of The Army Lawyer. Find out if there is a lawyer referral service. Check to see if there’s a list of certified specialists in family law – numerous states have licensed specialists for specific areas of the law.
9. **DIVORCE (IN SOME STATES) MAKES YOU SINGLE AGAIN -- NOTHING ELSE.** There are two different approaches to divorce in the state. In places like New York, Wisconsin and Washington, the law requires the parties to resolve all the other marital issues at the divorce hearing (or before). In states such as South Carolina, North Carolina and Delaware, that’s not the case – the other claims can precede or follow the divorce, but a divorce hearing is only a chance to change your marital status [and possibly get back your maiden name]. Know the difference!
10. **“SILENCE IS GOLDEN?”... OR “SILENCE IS DANGEROUS”?** What happens when you can’t reach agreement on a contested issue in a separation agreement? When in doubt, write it out. Don’t let silence be misinterpreted as agreement, and don’t let the general release clause found in most agreements wipe out a good claim for alimony or property division.
11. **WHEN IN DOUBT, ASK!** Know your resources – SJA, deputy, section chief, head of the law center, civilian attorneys or Reservists. When you’ve got a tough nut to crack, be smart enough to ask around. The only dumb question is one you never ask!
12. **DON’T FORGET THE SBP.** You’re not doing your job in dividing a military pension for the spouse unless you ensure she gets SBP coverage or equivalent insurance in the event of the service member’s death. And don’t settle for SGLI – under a U.S. Supreme Court case called Ridgway, the courts cannot enforce agreements to provide SGLI as part of a divorce settlement.
13. **KNOW YOUR RESOURCES.** Read The Army Lawyer and stay in touch with the Legal Assistance Forum on JAGCNET so you’ll know what’s happening. Keep current copies of the *Co-Counsel Bulletins* and *Silent Partner* infoletters (for JAGs) at your desk at all times; make sure you’ve read them thoroughly. The same goes for the client handouts: TAKE-1,

*Legal Eagle* and *From Counsel*. Make sure you've read what your clients should be reading, so you'll know what printed advice they've been given. Know where your resources are on the Internet. Go to the bar association meetings as often as they are held – this will help you stay current on the law and on what's happening in the courts (which is just as important as what the law is, anyway). Attend CLE programs to stay current. Borrow videotapes from The Army JAG School. You can't know too much!

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