

PREPARING THE MILITARY CLIENT TO DEPLOY

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Do you know that your neighbor might be leading a double life? That's right. She might be a member of the military Reserves. This means that most days she is just another blue-collar worker, professional, or homemaker. But Jane Citizen might also be on the brink of deploying somewhere to an ongoing mission. To perform her duties, Jane will need to temporarily leave her responsibilities, job, and family. As a result of this upheaval, she might come to your office with questions: about her right to return to her old job, her court-ordered child support payments to her ex-husband, her pending lawsuit against her ex-landlord for eviction, or any combination of these. This article is a guide for the civilian practitioner representing an active duty or Reserve client who is deploying to parts unknown. It contains information, suggestions, and a deployment checklist that will help your client and her family through this hectic time.

As with most things in life, preparation is the key to a successful deployment; the best time to prepare is before your client receives orders. Your work will involve four main areas of concern: legal, medical, financial, and administrative.

Legal Preparations

Your client probably has Servicemembers' Group Life Insurance (SGLI), with a death benefit of \$250,000; she probably has designated beneficiaries for her pay and allowances in the event of her death. Unfortunately, many military members overlook the rest of their estate, as well as additional issues involving child custody, support, and other time-sensitive matters. All of these should be addressed prior to deployment. Additional information about SGLI is available at <http://www.insurance.va.gov/sglivgli/sglivgli.htm>.

- **Prepare a will.** Check whether your client already has a will; many mobilized military personnel will need one. If Jane is unmarried, has no children, and does not own significant property, then a will is probably unnecessary. If she already has a will, review it to determine whether significant developments, such as a new domicile, the birth of a child, or divorce, indicate that changes are required.

If Jane needs a new will, she should first review her choice of execu-

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tor or personal representative. This person will be responsible for, among other things, presenting the will to the appropriate court for probate, notifying beneficiaries, safeguarding estate assets, paying outstanding bills, and filing estate tax returns. Serving as an executor is often complex and time-consuming. For this reason, Jane should check to see whether the person is willing and available and also should name an alternate in case her first choice cannot serve. If Jane has children, she can appoint a guardian to care for them—again, deciding whom she wants for this important task, and checking whether the person can fulfill it, takes time and thought.

“Location, location, location” is the key phrase once the nuts-and-bolts decisions are made: Be sure to let Jane know she should keep her will in a safe place, let her personal representative know where to find it, and be certain that the personal representative can get to it.

- **Nonprobate assets.** Certain assets will pass outside of Jane’s will (e.g., life insurance, retirement accounts, and joint accounts with rights of survivorship). This means that the will cannot control to whom these assets will pass. Advise her to review her individual retirement accounts (IRA), life insurance beneficiary designations, and employee benefit plans such as 401ks. Be sure to check whether bank accounts contain language such as “joint tenants with right of survivorship or payable on death,” to ensure these items pass outside probate to the selected persons.

- **Advance care directives.** Talk with your client about preparing a living will or medical care directive, which allow clients to specify how to handle medical situations if they become mentally incapacitated or are otherwise incapable of making decisions for themselves. Again, location is critical. Jane should make sure that a copy is put into her medical files and that the person she designates to make decisions has access to the original. A word of caution: Many people mistakenly put these documents in safe deposit boxes. Medical directives are “action” documents, not ones that need safeguarding. Storing this document in a locked box could waste precious time that your client might not have.

- **Power of attorney.** Your client will need to consider granting power of attorney to a trusted person to handle things in her absence—a good friend or relative, possibly. There are two types of powers of attorney: The general power of attorney (GPOA) allows the grantee to do, on the grantor’s behalf, anything that person could do, including taking out loans, opening or closing bank accounts, and buying or selling property. The “special” or “specific” power of attorney (SPOA) grants the power to do only one or two things on behalf of the grantor.

Most military personnel will seek a GPOA for an indefinite period of time, on the advice of their commander or supervisor. It is your job

to ensure that your client understands fully the implications of granting someone such broad powers. For example, some soldiers returned from Desert Storm to find that their spouses had used the GPOA to incur enormous amounts of debt in the servicemember's name during their absence. Some spouses had gone further and used that same GPOA to obtain a divorce from the servicemember and divide the marital property in a not-so-equitable fashion. Although the grantor technically can revoke a POA at any time, this can be difficult to do. It is better to encourage your client to plan her needs carefully and decide whether a SPOA could fulfill them.

Also encourage clients to limit the length of the POA to one year. Even if the soldier is deploying, she can execute a new POA in 12 months, if necessary, because military units have judge advocate attorneys (JAGs) in the field to provide this type of legal assistance. Some things for which your client might need a POA include: storing household goods and vehicles, filing taxes, business arrangements, banking needs, child care, and emergency medical care for children or dependents. Although a GPOA includes banking, many banks are reluctant to accept them—it is better to have a SPOA with the bank account number(s) annotated on it. Check ahead to confirm the SPOA will be accepted; some banks have their own forms.

- **Legal obligations.** Make sure your client does not have pending legal actions like court appearance for a traffic ticket or a lawsuit from her last landlord. If Jane is in the middle of legal proceedings, contact the court or opposing counsel immediately and try to resolve those issues as quickly as possible. Under the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), 50 U.S.C. App. 521 *et seq.*, you can obtain a stay of proceedings on behalf of your client if you can show that her ability to prosecute or defend in a civil (not criminal) suit is “materially affected” by her active duty service.

To prove “material affect” you will need to show the court that her military duties prevent her from appearing in court or participating in a significant part of the legal proceedings, such as a deposition, or that they substantially hinder her from assisting in the preparation of her case. Jane probably will have to sign and file an affidavit in support of these assertions and might also be required to submit a recent copy of her pay stub, known as a Leave and Earning Statement (LES). If the court finds her assertions to be true, it *must* grant a stay. Courts are reluctant to grant long-term stays in proceedings and tend to require military parties to act in good faith and be diligent in efforts to appear in court.

- **Support obligations.** Many military members are single parents, divorced, or both. And many of them mistakenly believe that if they are called to active duty, their child support or alimony payments are

automatically suspended or reduced. This is not so. If your client pays support, does military service substantially affect the ability to pay the ordered amount? For example, let us make Jane a surgeon with a six-figure income from private practice. She is a lieutenant colonel (LTC) in the Army Reserve, has just been activated, and pays support to her ex-husband, who has custody of their two children. Jane's salary as a lieutenant colonel is now somewhere around \$65,000 a year, including benefits and professional pay. Her activation probably creates a substantial change in her ability to meet her support obligations.

Before advising her to expect a reduction in support, however, thoroughly examine all factors. Has her ex-husband just lost his job? Does Jane have income from other sources, such as dividends, interest, or rental property? Have the children's expenses recently increased because of medical or educational needs? Was the child support set too low initially, or has it not been increased in years? And what about Jane's own expenses? What happens if she applies for a reduction in her home mortgage rate to 6 percent under the SSCRA and asks for a stay of her loan payments due to her lower income on active duty?

All of these circumstances would have to be considered by the court to rule on a petition to reduce support. If, after reviewing the facts, you find that Jane's ability to meet her support obligation has been adversely affected, promptly file a motion seeking modification of the support order. It is important to move quickly because, under federal and state law, the judge can modify the support order only back to the date the motion was filed. If Jane was called to active duty on December 1, 2001, and you wait until May 1, 2002, to file the motion to reduce, the judge cannot "forgive" the support obligation between December and May.

But what happens if Jane, a schoolteacher, makes \$30,000 and is called to active duty as a captain with more than eight years of service? When she goes on active duty her base pay increases to \$45,000 a year. When the Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS) are added, plus any hostile-fire pay or family-separation pay, her income could be more than \$50,000, almost twice her civilian salary. She most likely would not receive a reduction in child support when she is recalled to active duty. In fact, her ex-husband might even apply for an *increase* in support.

In either case, the court looks to the guidelines to see what the presumptive amount of child support would be if those apply. All 50 states and the District of Columbia use guidelines to determine child support (unless a variance is requested). More information on child support guidelines is available at <http://www.supportguidelines.com>, which contains rules and charts for your jurisdiction, useful articles on college expenses, how to link child support and visitation compliance, support for adult disabled children, and the like.

Medical

- **Insurance.** Before Joe Soldier leaves on his assignment, he should review all current insurance policies: the military SGLI, medical, dental, automobile, homeowners, and/or rental insurance. Certain policies provide that rates for automobiles or household goods that are stored in his absence are reduced during the time Joe is deployed. An important area is family health care insurance. Joe should guarantee that adequate medical coverage is available in his absence. Information about the military health care coverage TRICARE is available at <http://www.tricare.osd.mil>. Joe should use the attached checklist to annotate all of his policy numbers and their locations along with contact information. Joe should give a copy to a trusted family member or personal representative and he should keep a copy too.

- **Defense Enrollment Eligibility Reporting System (DEERS).** All dependents should be enrolled in the program and have current identification cards. The DEERS cards facilitate all types of medical treatment and permit access to the military installation, the commissary, and the PX (post exchange) or BX (base exchange), which are like department stores. If family members are not enrolled or there is a problem with their paperwork, they will need to find Joe (which might not be an easy task) so he can fill out the necessary paperwork and get approval of the dependent status through his unit. This can take a month or longer. If a family member with valid enrollment simply loses the card, a replacement can be easily issued at the nearest military installation ID card section.

Financial

- **Banking Services.** Military personnel are paid either bi-weekly or monthly via direct deposit into a bank account of their choosing. Joe should ensure that his wife or designated representative has access to that account; if not, she can be added as a co-owner of the account, or another account can be established into which regular allotments from the paycheck will be deposited. If Joe is paying child support by check every month, you might suggest he set up an allotment; it can be changed or cancelled at anytime. Joe should also be sure to use the pre-mobilization checklist to annotate all of his account numbers and contact information. Information on allotments, pay, and benefits is available at the Defense Finance and Accounting Service website, <http://www.dfas.mil/money/milpay>.

- **Tax Reminders.** Servicemembers must execute POAs that will allow another individual to file income taxes for them if they are deployed past the filing deadline. Jane Citizen's taxes could vary according to whether she serves in a combat environment or overseas. Jane could be entitled to deadline extension because of her service,

and part or all of her pay might be tax free.

Other financial options that are available to service members include the Thrift Savings Plan, a retirement program whose details are available at <http://www.tsp.gov>. Unless you are a tax specialist, you might want to refer clients to the IRS website at <http://www.irs.ustreas.gov>.

- **Creditors.** Clients should notify creditors that they are deploying and provide the company with a change of address or contact person if needed. This is an especially important step because many credit card companies and mortgage companies reduce their interest rates for military members who deploy. Under the SSCRA, activated reservists may be entitled to a reduction in their home mortgage interest rate—6 percent while deployed—if their military service materially affects their ability to pay preservice debt. Specific information on SSCRA is available from the Army JAG school's home page, <http://www.jagcnet.army.mil/TJAGSA>. (Click “Publications,” scroll to “Legal Assistance,” and scroll to JA 260, *Soldiers' and Sailors' Civil Relief Act Guide*. You can also find useful material on SSCRA at these URLs:

- U.S. Coast Guard:
<http://www.uscg.mil/mlclant/Ldiv/soldiers1.htm>;
- Air Force Academy:
<http://www.usafa.af.mil/10ja/ssra.htm>;
- Coast Guard Fact Sheet:
http://www.uscg.mil/legal/la/topics/sscra/SSCRA_Factsheet.htm;
- Army JAG Corps public preventive legal information site:
<http://www.jagcnet.army.mil/legal>
- Navy:
<http://www.chinfo.navy.mil/cgi-bin/search> (Enter “SSCRA.”)

Administrative

- **Childcare.** A useful resource that servicemembers with children can create is a list of names and phone numbers (plus pertinent medical histories, current medications, and insurance info) of the children's doctors, dentist, and pharmacy; emergency contacts; known allergies; trusted babysitters; and the like. If a child will be switching schools due to the parent's deployment, Jane or John Citizen also should check with the district about necessary paperwork and proof for enrollment.

- **Vehicle registration and license.** Of course, vehicle registrations, driver's licenses, and proof of insurance should be up to date. If the car will be used while the owner is deployed, leaving the name of the garage or mechanic can be helpful—as would be an extra set of keys.

- **Household.** Jane should have someone look after her house. If there are repairs to be made, she should get them done now. She should also make a list of the important repairpersons (plumber, carpenter, electrician, etc.) and their contact information.
- **Pets.** Jane's dog, Fido, needs help, too. Military personnel all too often find it necessary to drop pets off at the local shelter when they are mobilized. If a "temporary adoption" can be arranged, she should make sure all vaccinations are current; leaving the veterinarian's name and number and medical records or pertinent pharmacy information is also helpful.

Resources

As the legal advisor for Jane Citizen or Joe Soldier, you need to know your resources.

- All of the armed services have publicly accessible websites that cover information on pay, allowances, policies, and such. Enter <us> followed by the initials of the branch, "af" for the Air Force, etc., followed by <.mil>. The Air Force site, for example, is <http://www.afus.mil>.
- The American Bar Association and many state bar associations have family law and military law sections and knowledgeable members who are eager to answer your questions.
- The Standing Committee on Legal Assistance for Military Personnel, <http://www.abanet.org/legalservices/lamp.html>, carries helpful information.
- The military committee of the Family Law Section, <http://www.abanet.org/family/military>, contains excellent information about the interface between military and family law issues.
- Another site, which is exceptional in providing up-to-date informative material, is The North Carolina State Bar's Legal Assistance for Military Personnel (LAMP) site, <http://www.nctbar.com/home/lamp.htm>.
- A family program toolkit and deployment checklist are available at <http://www.defenselink.mil/ra/family/toolkit>. This toolkit packs information on predeployment and mobilization, servicemember readiness, employer support, financial management, legal affairs, health care and family member readiness.

Conclusion

This article can help you and your military clients face the multitude of issues that occur in a deployment. Preparation is key—even if that means locking Jane and Joe in your office with a pen, a desk, and the necessary papers! The attachment that accompanies this article ("[Checklist](#)") contains a thorough deployment checklist and sample forms for many of the issues discussed above.