

Paternity Allegations in the Army

By Rudy Wartella

As most of you have heard, there is a lot of interest in high-profile paternity cases – from Anna Nicole Smith to the recent media speculation that former Senator and Presidential candidate John Edwards may have fathered a child out of wedlock. Although not as high profile, the Army also has its fair share of paternity cases. Paternity cases in the Army are governed by Army Regulation 608-99. The Army requires a Soldier to provide for a child born out of wedlock when there is a court order of paternity, or a “functional equivalent” to a court order of paternity. In many states, the alleged father’s signature on an Acknowledgement of Paternity is a functional equivalent to a judicial determination of paternity. Whether or not there is a “functional equivalent” is a question of state law. When there is no court order, commanders should contact their trial counsel for advice on whether there is a “functional equivalent.” Soldiers with paternity issues (mothers or suspected fathers) may contact the legal assistance office for legal advice. Because of conflict of interest rules, the Army legal assistance office on Torii Station would only be able to help one of the parties.

Once there is a court order of paternity or a “functional equivalent” of a court order, the Soldier must provide child support. If the court order states an amount, then the Soldier must pay the amount listed in the court order. If the court order is silent about child support or if there is a “functional equivalent” to a judicial determination of paternity, then the Soldier must pay in accordance with AR 608-99, paragraph 2-6 (http://www.apd.army.mil/pdf/files/r608_99.pdf). If there are no other supported family members, the Soldier must pay the Non-Locality BAH Rate (BAH RC/T at with Dependents rate); formerly BAH II WITH. It is important to note that the amount of money a Soldier must pay has absolutely nothing to do with the amount the Soldier is receiving in allowances. A Soldier living at Fort Bragg would be required to pay the same amount as the Soldier on Okinawa.

The company commander has a responsibility to personally review (paragraph 3-7) and respond (paragraph 3-1) to each paternity inquiry and will inform the Soldier of his legal and moral obligations, if any, and refer him to a legal assistance attorney. If the Soldier admits paternity (after legal consultation), the commander will urge the Soldier to provide financial support to the child. If the Soldier also agrees to provide support, the commander will assist the Soldier in obtaining BAH-WITH or BAH-DIFF (if appropriate) and in filing out a voluntary allotment form. The commander will also assist in obtaining a family member ID card for the child. Of course, if the parents intend to marry, the commander will allow ordinary leave to the Soldier in order to marry the mother.

Soldiers needing legal advice concerning paternity may contact the Torii Station legal assistance office at 644-4332. Commanders needing legal advice about their responsibilities should contact the SJA Office at 644-4783.

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