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e-Newsletter

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Overwhelmed: Where Do I Begin?

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Does North Carolina Recognize Quickie Divorces?



Overwhelmed: Where Do I Begin?

By Amy A. Edwards

First: The Consultation

A consultation is not the same thing as hiring an attorney. It is simply a meeting with an attorney, who should then give you legal advice and tell you what the cost is to hire that attorney. After the consult, it is the client's decision whether to hire the attorney. The client might choose to do nothing at all after a consult. In fact, a number of people having problems with their relationship have consults because they want to know what their options are if the relationship deteriorates in the future.

The meeting is a chance for you to bring a list of questions you have so that you can get the answers you need to make serious decisions in your life. It can be helpful to do some research to get a general information about the process, but the attorney gives you legal advice based on your specific situation. After a consult, it is common for clients to say that they feel so much better knowing what the real issues are, and what the possible solutions are. They're sometimes surprised to discover that threats or information from the other parent or spouse is not accurate or

even feasible, which can be a big relief.

Second: After the Consult

Once you have a few answers, you can then decide whether you are ready to move forward with the separation, custody case or other important legal matter. However, if you have been served with a lawsuit or motion, that first decision is made for you. To begin working on your case, our office requires an advance of funds to be placed in your account. Sometimes, people refer to this as a retainer. If money remains in your account at the end of your case, our office returns it to you. More often, things take longer than anticipated. This is partly because it is difficult to tell how much the other party will truly dispute. If the dispute ends up in litigation, we cannot control the court system and whether there are trial dates, civil discovery, and other litigation events. The attorney your ex hires can also make a big difference, including whether he or she is willing to make any good faith efforts to settle the case before there is a trial.

Third: Relief of Sharing the Burden

The next phase after your decision to hire us is to put it in our hands. People in family law cases are already dealing with a crisis in their lives. There are numerous decisions you will need to make. But relying on an experienced attorney to guide you through the decision-making process gives you the support that you need to transition from one phase of your life to the next. Different clients have different comfort levels of involvement in their case, which they usually determine after working with us for a little while. Clients can always ask questions and discuss concerns with us, but the default mode is for us to take over the case and follow up with you as needed.



The Deployed Parents Act: Protecting Parents (Part 1 of 2)

By Amy A. Edwards

In North Carolina, we're fortunate to have the Uniform Deployed Parents Custody and Visitation Act, which helps military parents balance their military duties while they are deployed and their desire to maintain their bond with their children. Not only that, but the Act allows the child to preserve the relationship with deployed parent's side of the family, or even an unrelated non-parent that the deploying parent nominates. Parents who reach an agreement about what will happen between the child and the non-parent during deployment can have the agreement treated as a court order if they take certain legal steps. But the Act also protects the military parent when there is no agreement. It also requires the court to offer an expedited trial to take place before a parent deploys.

What the Act Does: Parental Rights

Before the Act, if a parent temporarily surrendered custody as the military often required, his or her parental rights were seriously compromised from the viewpoint of the North Carolina courts. Surrendering custody before the Act put a parent at risk for losing permanent custody to the non-parent. Giving someone else custody of your child could be seen as acting inconsistently with your constitutional

rights as a parent. Our state law simply didn't have any solution to the problem. Now, the Act allows judges to enter temporary custody orders for the sole purpose of protecting military parents while they perform their military duties. The deploying parent can nominate a third party who is a non-parent, such as a grandparent or even a close family friend, to have limited rights in his or her place while that parent is gone.

What the Act Does: Special Problems

Military deployment isn't convenient for anyone, including judges who may not deal with military parents very often. Judges make custody orders detailed and specific with exact dates, exact times, transportation arrangements and other things that are likely to be disputed. The more details a custody order has, the harder it is for a parent to "interpret" it when there is a question. For judges, it can be complicated to figure out how the parent and child can remain close while he or she may not even be on the same continent, in a situation where no one necessarily knows the important details surrounding the deployment.

- The Act generally requires these temporary orders to "provide for liberal communication" between the child and parent while the parent is deployed, specifically including electronic communication such as FaceTime. It also allows the parent, or witness who isn't reasonably available, the right to testify by phone or electronically.
- The temporary order must also "provide for liberal contact" between the child and parent while the parent is on leave or otherwise is available to see the child. This compliments our state child custody law which prohibits a court from looking at a parent's past deployment or possible future deployment as the only basis in deciding what is in a child's best interest. Instead, the court may consider deployment as one of multiple factors in deciding what is in a child's best interest.

Who is Eligible for the Protections of the Act?

There are a number of requirements to qualify for the protections of the Act but the first one is that a parent must be in the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, a Merchant Marine, commissioned corps of the Public Health Service,

commissioned corps of the NOAA, or National Guard. The next requirement is that the deployment be a movement or mobilization to a location for more than 90 days, but less than 18 months, pursuant to an official order that's designated as unaccompanied, does not authorize dependent travel, or otherwise doesn't allow the movement of family members there. Returning from deployment means that the parent returns based on the uniformed service orders. For purposes of the child custody case, a parent's residence is not changed just because he or she is deployed.

* The Uniform Deployed Parents Custody and Visitation Act, [Chapter 50A, Article 3](#) of the North Carolina General Statutes.

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Does North Carolina Recognize Quickie Divorces?

By Amy A. Edwards

In North Carolina, parties seeking a divorce must show that at least one of the spouses has resided in the state for at least six months when either

spouse files for the divorce. As of the date that a spouse files a claim for divorce, the parties must be separated for at least twelve months. When they separated, at least one of the spouses had to intend for the separation to be permanent.

Why Do People Want Quickie Divorces?

Besides the obvious desire to be legally single and/or remarry, there are several other reasons people get quickie divorces. There are those who want to get a divorce without the one-year separation, or those who haven't lived in North Carolina for at least six months at the time the divorce is filed. Another incentive for quickie divorces is the payment of alimony. The deadline for filing an alimony claim in North Carolina is the entry of the divorce decree. If there isn't an alimony claim already pending when the divorce decree is granted, it permanently expires and can't be filed again. In other words, someone might try to slide the divorce past the other spouse with the hope that he or she won't have time to file for alimony.

The U.S. Constitution

Our Constitution protects citizens with the right to due process of law. The courts only have the right to make rulings (*i.e.*, legal authority) if they have jurisdiction. Without it, the court can't issue valid court orders or decrees. A party to a lawsuit is entitled to legal notice and an opportunity to be heard and defend himself or herself. This usually occurs by service of the summons and complaint, when a sheriff hands a copy of the paperwork to the defendant, or when the defendant formally signs to accept certified mail containing those documents.

Divorces Granted by Other States

When one U.S. state enters a decree, another state must generally accept it as valid. The Constitution requires the other state to recognize it, giving it what is called full faith and credit. There are exceptions. North Carolina or any state can reject a decree of another state if that decree was fraudulent or the court did not have jurisdiction (*i.e.*, the defendant wasn't served with a copy of the paperwork). In other words, if it wasn't valid in the state that issued it, then it isn't valid here.

Divorces Granted by Foreign Countries

North Carolina can refuse to recognize a decree from another country if it was obtained by fraud or the court lacked jurisdiction. The Constitution doesn't apply to other countries, so there's no automatic recognition of their divorce decrees. Instead, a state court voluntarily chooses whether to recognize a divorce decree from another country. If it is recognized, North Carolina extends the courtesy of recognition by what is called *comity*, instead of giving it full faith and credit that would apply to decrees from other states.

The first question is whether the divorce is valid where it was entered. This includes the basics of a lawsuit like legitimate domicile, meaning that the person actually lives in a place and the court has jurisdiction. In one North Carolina case, a wife traveled to the Dominican Republic for five days for the sole purpose of getting the quickie divorce. Our court ruled that the divorce was not valid because she lived here, not in the Dominican Republic. Foreign divorces that aren't recognized here are usually not recognized because the spouse lives here, and the foreign country lacks jurisdiction over U.S. residents.

The next question is whether the decree was entered after a fair trial in a legitimate court proceeding that gives both parties the *opportunity* to be heard or to object. A North Carolina court must also consider whether the foreign divorce decree violates our state's public policies. We actually have a public policy against "the hasty dissolution of marriages." If a court believes the divorce was a quickie divorce, it can refuse to recognize it.

Mayer v. Mayer, 66 N.C. App. 522 (1984).

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