

Court Decision Strips Iraq Veteran of Child Custody

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– On January 3, the Appellate Division of the New York State Supreme Court issued a decision which will have a serious and immediate impact on National Guard members and their families. The decision greatly decreases the level of support afforded to military families and undermines the rights of parents enlisted in the Reserves. In *Diffin v. Towne*, Richard S. Diffin petitioned his former wife Tanya Towne, of Canajoharie, NY, for custody of their son, Darrell, after learning that Towne, a member of the Army National Guard, would be deployed to Iraq in May 2004 for a period of at least a year. After being awarded temporary custody for the duration of her deployment, the father petitioned to modify the temporary custody order to award primary physical custody to him. The Court found that the best interests of their son would be to grant permanent custody to the father, despite the fact that the mother's deployment was not her fault. "This decision marks a serious attack on our national security and the civil rights of military members. It is deeply unfair to force soldiers to choose between their family and their service to our country. Soldiers fighting in Iraq should not be burdened with worry that their children will be taken away because of their service," said Gregory T. Rinckey, a former Army JAG attorney who focuses his practice on military and family law at Tully Rinckey PLLC. A piece of legislation introduced by Senator Judd Gregg of New Hampshire would amend the Servicemembers Civil Relief Act to provide protection for child custody arrangements for military parents deployed in support of a contingency operation. The proposed child custody legislation is similar in intent to an amendment which prevents courts from changing the custody status of the child of a service member who has been activated or deployed. Both initiatives come in response to several highly publicized instances where military duty has interfered with a parent's ability to attend court hearings involving child custody or even resulted in a service member returning from deployment to find that a judge had transferred custody of a child to an ex-spouse in their absence. "Congress needs to act now to protect military families the same way they did when they enacted the Uniformed Service Employment and Reemployment Rights Act which protects their full time employment. The same attention should be paid to their custody rights," said Rinckey.