

## Ask the Lawyer: Who Has Custody of My Child During Deployment?

By Mathew Tully

Q. I'm newly divorced and will soon be deployed overseas. I have joint legal custody of my 2-year-old son, who primarily lives with me. I'm afraid if I leave my boy with my ex-husband then he will try to obtain physical custody. I'd rather have my parents take on the role of caregiver while I am away. Can I do that?

A.

According to the U.S. Department of Defense, by 2010 there were 142,000 service members who were single custodians of a minor child. Doubtlessly, amid all the deployments from the wars in Iraq and Afghanistan, many of these parents confronted the type of dilemma you describe. While you can certainly leave your son with your parents, your ex may petition to modify your custodial arrangement and seek primary custody. How successful he will be varies from state to state and depends on the language of your divorce decree.

In some states, statute authorizes deployed service members to delegate authority regarding a minor child to a family member. Official Code of Georgia Annotated § 19-9-122, for example, provides for such delegation of authority to a grandparent in the state when a hardship in the form of at least 24 months of military duty prevents the service member from caring for the child. But states such as Maryland lack this type of law. While some states' statutes specify that a deployment does not provide the grounds for a change in custody, Maryland, again, is not among them. Under Maryland Code, Family Law, § 9-108 does provide for an expedited process for cases involving petitions for modifications to existing child custody or visitation orders that are filed within 30 days after the end of a service member's deployment.

The case *Whittaker v. Dixon*, 411 Md. 580 (Md. 2009) illustrates the complexities parents in the military can face when they are deployed. This case involved an Army major who, before being deployed overseas, left her daughter in the care of her parents. Her ex-husband, in response, petitioned for temporary residential custody. Prior to the deployment, the major had sole legal custody of the child "so to obtain a passport for the minor child and for unrestricted travel by the child" and residential custody and she and her ex-husband shared joint legal custody "for major issues." A circuit court initially granted the father with temporary residential custody, and while the court later rescinded that order it declined to return the child to the major's parents and left the girl in the custody of the father. Rather than issue a new emergency custody order, the court let the terms of the divorce decree dictate custody, and an appellate court affirmed this decision.

Service members could avoid this problem by having their divorce attorney include language

in their divorce decree specifying that a deployment does not serve as a ground for modifying custody arrangements. The custody arrangement should also provide for telephone contact during deployments, significant amounts of parenting time while the service member is one on leave, and visitation between the service member's family and the child during the service member's deployment. Service members or their non-military spouses with child custody or child support issues should consult with an experienced military divorce lawyer.