

contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives a request for reconsideration more than 1 year after the ABCMR's original decision or after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.

(h) *Claims/Expenses—(1) Authority.* (i) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(ii) The Army may not pay any claim previously compensated by Congress through enactment of a private law.

(iii) The Army may not pay for any benefit to which the applicant might later become entitled under the laws and regulations managed by the VA.

(2) *Settlement of claims.* (i) The ABCMR will furnish DFAS copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(ii) The DFAS will settle claims on the basis of the corrected military record. The DFAS will compute the amount due, if any. The DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted. The applicant's acceptance of a settlement fully satisfies the claim concerned.

(3) *Payment of expenses.* The Army may not pay attorney's fees or other expenses incurred by or on behalf of an applicant in connection with an application for correction of military records under 10 U.S.C. 1552.

(i) *Miscellaneous provisions—(1) Special standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* (Civil Action No. 77-0904), a former Army soldier is entitled to an honorable discharge if a less than honorable discharge was issued to the soldier on or before November 27, 1979 in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the term "CATEGORY G" in block 11b of DD Form 149. Such applications should be expeditiously reviewed by a designated official, who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official will not constitute an action or decision by the ABCMR.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act (5 U.S.C. 552), records created on or after November 1, 1996 will be available by electronic means.

(ii) Under the Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is received from the applicant or unless

the Board is otherwise authorized by law.

[65 FR 17441, Apr. 3, 2000, as amended at 70 FR 67368, Nov. 7, 2005]

**PART 583—FORMER PERSONNEL
[RESERVED]**

**PART 584—FAMILY SUPPORT, CHILD
CUSTODY, AND PATERNITY**

Sec.

- 584.1 General.
- 584.2 Family support and child custody.
- 584.3 Paternity claims.
- 584.4 Adoption proceedings.
- 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.
- 584.6 Procedures governing nonactive duty or discharged personnel.
- 584.7 Basic allowance for quarters.
- 584.8 Garnishment.
- 584.9 Involuntary allotments.

APPENDIX A TO PART 584—REFERENCE

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 50 FR 52447, Dec. 24, 1985, unless otherwise noted.

§ 584.1 General.

(a) *Purpose.* This regulation sets forth the Department of the Army (DA) policy, responsibilities, and procedures on—

- (1) Support and nonsupport of family members.
- (2) Child custody.
- (3) Paternity claims.
- (4) Adoption proceedings involving the children of soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy for processing—

- (i) Nonsupport complaints.
- (ii) Child custody complaints.
- (iii) Paternity claims.
- (iv) Requests on adoption proceedings of children of soldiers.

(2) The Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC) will—

(i) Set procedures for processing the following:

- (A) Nonsupport complaints.
- (B) Child custody complaints.
- (C) Paternity claims.
- (D) Requests regarding adoption proceedings of children of soldiers.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims received at USACFSC regarding Army soldiers.

(iii) Carry out the objectives of this regulation to protect the rights of the soldier, the family, and the interests of the Army.

(iv) Advise and assist the heads of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other commanders on matters pertaining to—

- (A) Nonsupport.
- (B) Child custody.
- (C) Paternity.
- (D) Adoption proceedings of children of soldiers.

(3) Officers having general court-martial jurisdiction will give special emphasis to the support of family members in command information programs. This includes informing soldiers of Army policy and of their responsibility to provide adequate support for all family members and to comply with all court orders.

(4) First level field grade commanders will monitor all instances of soldiers' repeated failure to meet the requirements of this regulation that are brought to their attention. They will take action, when proper.

(5) Immediate commanders will—

(i) Ensure that soldiers are informed of the DA policy on support of family members and that they comply with court orders. They will also inform soldiers of the possible consequences of failing to fulfill financial obligations. This information will be included during inprocessing and outprocessing briefings, particularly during processing for mobilization and overseas movement.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims per this regulation.

(iii) Counsel soldiers when complaints and claim are received. If the

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soldier is suspected of criminal conduct, self-incrimination protections (article 31, Uniform Code of Military Justice (UCMJ) and rights advisement) must be provided. (See § 584.2(g)(4).)

(iv) Answer all correspondence received from CG, USACFSC and other DA officials. In answering this correspondence, the commander will—

(A) Furnish complete details regarding nonsupport complaints, child custody complaints, and paternity claims.

(B) Reveal whether or not the soldier authorized the release outside the Department of Defense (DOD) of information obtained from a system of records. His or her decision should be recorded on DA Form 5459-R (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints).

(v) Answer all correspondence received directly from family members, legal assistance attorneys, and others. Normally, replies will not include information obtained from a system of records without the soldier's written consent. (See § 584.1(f).) Commanders may coordinate responses with the Staff Judge Advocate (SJA). Also, the commander will ask the SJA for guidance in unusual or difficult situations.

(vi) Inform the first level field grade commander of all instances of the soldier's repeated failure to meet the requirements of this regulation or to comply with court orders. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or continuing violations of court orders.

(vii) Refer correspondence or queries received from news media organizations to the unit, installation, or command public affairs officer for response.

(viii) Take appropriate action against soldiers who fail to comply with this regulation. These actions include, but are not limited to, the actions in § 584.1(d)(5)(viii) (A) through (E). Failure to comply with the minimum support requirements (§ 584.2(d)) or the child custody provisions (§ 584.2(e)) of this regulation may be charged as violations of article 92, UCMJ. Article 132, UCMJ, prohibits the making of false claims. Article 133, UCMJ, covers conduct unbecoming an

officer. Article 134, UCMJ, concerns dishonorable failure to pay debts and conduct of a nature to bring discredit upon the Armed Forces. Also, the criminal laws of some States prohibit the abduction of children by a parent or the nonsupport of family members in violation of existing court orders. These laws may also apply against soldiers under article 134, UCMJ, and Assimilative Crimes Act, section 13, title 18, United States Code (18 U.S.C. 13).

(A) Denial of reenlistment for enlisted members (AR 601-280).

(B) Letter of reprimand for filing in a soldier's Military Personnel Records Jacket or Official Military Personnel File (AR 600-37).

(C) Administrative separation from the service (AR 635-100 or AR 635-200).

(D) Nonjudicial punishment under article 15, UCMJ.

(E) Court-martial.

(ix) Urge soldiers to provide additional financial support beyond the required minimum whether the needs of the family so require.

(x) After coordination with the SJA and appropriate command representatives, and under applicable State, Federal, and host country laws, take remedial steps to assist in the following:

(A) Elimination of continuing violations of court orders and this regulation on child custody.

(B) Return of such children to the parent or guardian entitled to custody.

(6) The unit, installation, or command public affairs officer will—

(i) Answer correspondence and queries received from news media organizations.

(ii) Coordinate with the SJA before making any response.

(e) *Policy.* (1) Soldiers of the Army are required to manage their personal affairs satisfactorily. This responsibility includes—

(i) Providing adequate and continuous support to or for family members. (See § 584.2.)

(ii) Complying with all court orders.

(2) The Army has an interest in the welfare of both soldiers and their families. This is recognized by numerous laws and programs authorizing the following:

(i) Family housing.

(ii) Living and travel allowances.

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- (iii) Medical care.
- (iv) Child care and development.
- (v) Community support services.

(3) Because of military duty, soldiers and their families often live in States in which they have not established domicile. Frequently, they reside in foreign nations. This often places soldiers beyond the judicial process of State courts.

(4) The Army recognizes the transient nature of military duty. This regulation prohibits the use of a soldier's military status or assignment to deny financial support to family members or to evade court orders on child support or custody. Commanders have a responsibility to ensure that soldiers provide for the welfare of their families. Before recommending approval of requests for, or extensions of, oversea assignments, commanders should consider whether the soldier's oversea assignment will adversely affect the legal rights of family members in pending court actions against the soldier.

(5) The policy in this regulation regarding the financial support of family members is solely intended as an interim measure until the parties—

(i) Arrive at a mutually satisfactory agreement, or

(ii) Resolve their differences in court.

(6) Soldiers are entitled to the same legal rights and privileges in State courts as civilians. This includes determining the extent and amount of their support obligations to family members. This regulation is not intended to be used as a guide by courts in determining the following:

(i) The existence of support obligations.

(ii) The amount of past, present, or future support obligations.

(f) *Release of information.* (1) Soldiers will be provided the opportunity of completing DA Form 5459-R before being questioned about complaints or claims under this regulation. Information voluntarily provided by soldiers may be used by commanders to answer inquiries. Replies normally will not include information obtained from a system of records without the soldier's written consent.

(2) Some information may be released outside DOD from a system of records even without the soldier's writ-

ten consent. Under the Privacy Act (5 U.S.C. 552a(b)(2) and AR 340-21, para 3-3), information may be released, if required, under the Freedom of Information Act. Under 5 U.S.C. 552(b)(6) and AR 340-17, chapter III, information from personnel and other similar files may be released if it does not constitute a "clearly unwarranted invasion of privacy." The information released must be in the public interest.

(3) The type of information that may be released from a system of records without the soldier's consent will vary from case to case. In each case, the public interest of having soldiers support their families and obey court orders must be balanced against the sensitivity of the privacy interests involved. Army policy favors permanent resolution of support and custody matters in court. The denial of information that hinders such resolution is not in the public interest.

(4) Before releasing information from a system of records without the soldier's consent, commanders may consult the SJA. Generally, the types of information shown below may be released to the complaining family member entitled to support or those authorized by the family member to act in his or her behalf (for example, legal assistance attorneys, Member of Congress, courts, Government welfare agencies).

(i) Present unit of assignment, including port calls and future duty assignments, permanent or temporary, if known.

(ii) Scheduled separation and retirement dates from the Service.

(iii) Rank and authorized pay and allowances for that grade.

(iv) Allotments authorized or being authorized for or in behalf of the family member entitled to support.

(v) The soldier's stated intentions, if any, regarding resolution of the complaint.

(vi) The general whereabouts of the soldier's children, if known.

(5) The SJA should be consulted for legal advice before the residential address of a soldier or family member is released.