

MILPERSMAN 5800-010

PATERNITY COMPLAINTS

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1. **Introduction.** With respect to determination of paternity and support of illegitimate children, no complaint requires greater exercise of judgment and tact than the charge that a member serving under one's command is the father of a child born out of wedlock. While the member should not be left with the impression that either civil law or Navy Regulations require that he marry the mother of the child, if the member desires marriage, leave for this purpose is recommended whenever the absence of the member concerned will not be detrimental to the needs of the service. When the blood parents of an illegitimate child marry, and the member acknowledges paternity of the child, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate. While legitimized, the child is eligible for all allowances and benefits the same as any other legitimate child of the member.

2. **Foreign Complaints.** Complaints from various sources in foreign countries regarding alleged paternity, marriage, or related matters involving Navy personnel during their service at a foreign station can be detrimental to the prestige of the United States Navy and adversely affect international relationships if not promptly resolved. Commanding officers (COs) are expected to expeditiously dispose of such complaints. Commanding officers should feel free to seek advice of local United States consular officials. If, in the judgment of the CO, the situation cannot be disposed of satisfactorily or permanently before departure from the foreign area in question, a report setting forth all pertinent facts should be made to appropriate higher authority.

3. **Legal Obligations.** Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children. Some jurisdictions provide for determinations of the legal obligation to support illegitimate children without determination of paternity. Either type of order or decree

falls within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy on active duty, the member concerned shall be informed of his moral and legal obligations as well as his legal rights in the matter.

4. **Financial Obligation.** The member shall be advised that he is expected to render financial assistance to the child regardless of any doubt of paternity that the member may have. If the court order or decree specifies an amount of support to be provided, the member shall be expected to comply with the terms of such decree or court order. If no amount is specified, support should be rendered following such reasonable agreement as may be made with the mother or legal guardian of the child or in the absence of such an agreement under the support guide in this article. Basic allowance for quarters may be payable on behalf of the illegitimate children. Basic allowance for quarters will be included in determining the member's gross pay. If the member refuses to comply with the terms of the court order, administrative action will be taken as appropriate.

5. **Court Competency.** A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved as well as being the proper judicial forum. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the court may have acquired jurisdiction over him by any mode of service or notice recognized as sufficient by the laws of that country. An order or decree against a citizen or permanent resident of another country, without personal service on him or personal notice of the action to him, is null and void unless he has voluntarily submitted himself to the jurisdiction by appearing and contesting the action. If there is no doubt as to the competency of the court to enter the order or decree, the question shall be referred to the judge advocate general.

6. **Moral Obligation.** In the absence of an adjudication of paternity or of a legal obligation to furnish support by a court of competent jurisdiction, the member shall be privately consulted, advised of the legal or moral obligations of support

of any illegitimate children as well as the rights in the matter, and asked whether he admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he is expected to furnish support as set forth above. Where paternity or legal obligation to support is admitted, members should be informed of their moral obligation to assist in the payment of parental expenses.

7. **Sample Reply**. Replies to individuals concerning paternity cases should be as kind and sympathetic as the circumstances permit. The following example may be appropriate in certain cases: (Use proper letter format.)

Dear Ms. Smith:

This letter is in response to your letter of 25 February in which you claim Seaman John P. Jones to be the father of your minor child.

Seaman Jones has been consulted regarding your claim, and he denies that he is the father of your child. Given this denial, the Navy can do nothing further to assist you without a court order finding Seaman Jones to be the father.

While I understand the difficulty of your situation, please understand that the Department of the Navy has neither the authority nor the facilities to adjudicate your paternity claim. If, however, Seaman Jones is adjudged by a civil court of competent jurisdiction to be the father of your child, he will be expected to contribute to the support of the child and to comply with the terms of the judicial decree. If he then refuses to take satisfactory action, he will be subject to administrative or disciplinary action which may jeopardize his Navy career. Such actions by the Navy are designed to encourage its members to voluntarily comply with court orders of support, but do not guarantee compliance. Any claim that you would have against Seaman Jones' military pay for the child support has to be pursued through a civilian court of competent jurisdiction.

If you have any questions regarding this, you should consult a private attorney.

8. **Court Summons**. Communications from a judge of a civilian court, including a court summons or a judicial order, concerning the availability of personnel to appear at an adoption hearing, where it is alleged that an active duty member is the father of the illegitimate child, shall receive a reply that indicates

a. due to military requirements, the member cannot be granted leave to attend court hearing until (date); or

b. a request by the member for leave to attend an adoption court hearing on (date), if made would be approved; or

c. the member has stated in a sworn written statement (forward a copy with response) that he is not the natural parent of the child; or

d. due to the member's unavailability caused by a specific reason, a completely responsive answer cannot be made.

9. **Inform the Member**. The member should be informed of the inquiry and the response and urged to obtain legal assistance for guidance (including an explanation of sections of the Soldier's and Sailor's Civil Relief Act), if appropriate.

10. **Members not on Active Duty**. Allegations of paternity against members of the Armed Forces who are not on active duty will be sent to the member concerned in such a manner as to ensure that the charges are delivered to the addressee only. Military channels will be used when practical. When requested by the complainant, the last known address of inactive duty members may be furnished under the same conditions as set forth below for former members.

11. **Former Members**

a. In all cases of allegations of paternity against former members of the Armed Forces who have been completely separated from the service and who hold no military status whatsoever, the claimant will be informed of the date of discharge, that the individual concerned is no longer a member of the Armed Forces in any capacity and that the Navy Department assumes no responsibility for the whereabouts of individuals no longer under its jurisdiction. The correspondence and all accompanying documentation will be returned to the claimant.

b. The last known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a certified copy of either a judicial order or decree of paternity or support duly rendered against the former member by a United States or foreign court of competent jurisdiction, or a document which establishes that the former member has made an official admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it, and/or in cases where the complainant, with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father to protect the physical health of either the prospective mother or the unborn child.

12. **Legal Assistance Officer**. Members should be encouraged to discuss any personal problems within the scope of this article with their legal assistance officer. This is not intended to delay the measures indicated once a case has reached an aggravated stage.