OFFICE OF THE STAFF JUDGE ADVOCATE
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FAMILY SUPPORT

Support obligation
IAW AR 608-99, Family Support, Child Custody, and Paternity, Soldiers must support their families. Failure to provide support may result in adverse administrative action or punishment under UCMJ.

Support based on Court Orders and Agreements
If there is a court order or written agreement, and the order or agreement has a provision regarding financial support, the Soldier must provide financial support according to the terms of the order or agreement. A Soldier must comply with a foreign court order if a United States treaty recognizes that court and enforces the order (foreign court order now becomes a state court order). Court orders from Germany typically are enforced with regard to Soldiers assigned for duty within Germany. Court orders from Korea or other countries may not be. If the foreign court order is not recognized, the Soldier must still provide support in accordance with AR 608-99.

Support based on Army Regulation
In the absence of a court order or agreement containing a support requirement, Soldiers must provide financial support to family members as follows:

- *All Dependents living in private housing* - the Soldier must pay an amount equal to the BAH Reserve Component/Transit[1] (BAH RC/T) WITH DEPENDENT rate (formerly known as BAH II).
- *All Dependents living in government housing* - the Soldier is NOT required to provide financial support.
- *All Dependents residing in different locations* - the Soldier must divide the amount of BAH RC/T WITH DEPENDENT rate equally between the family members.

EXAMPLE – a Soldier has 2 children from a previous relationship. The Soldier is now married with 1 child and lives with his wife and child in non-government housing. The Soldier is responsible for supporting 4 people: 2 children from his previous relationship, his wife and their child. If there is no court order in place mandating support for the 2 children from the previous relationship, an amount equal to the Soldier's BAH RC/T must be divided into fourths. One-quarter would go to each child from the previous relationship; the remaining two-quarters will go to his wife and their child.

Payment In-Kind
Generally, payment in-kind is limited unless a written agreement or court order provides for it. It is limited to non-governmental housing expenses for a dwelling where the supported family members live (provided the Soldier has legal responsibility by reason of contract, lease, or loan agreement). Examples include rent, mortgage, real property taxes, and essential utilities (car payments and/or cell phone bills are NOT deemed essential, even if your name is on the contract). The Soldier must make up any shortfall between payment in-kind and the actual support obligation.

Release from support obligation
Absent an agreement or court order to the contrary, the Soldier's Battalion Commander **MAY** release the Soldier from providing support to his/her family member **IF**:

- *Soldier's spouse earns more than the Soldier does* – if Soldier's spouse makes more than the Soldier's base pay, he may be released from spousal support. If the Soldier is receiving BAH-WITH based solely

[1] This term is still used even though as of January 1998, all housing allowances have been combined into a new term, Basic Allowance for Housing (BAH), which includes BAH and other allowances. Check http://www.defenselink.mil/militarypay/pay/bah/02_types.html for the BAH RC/T rates.

on the spouse, the Soldier must stop the BAH-WITH. If there are children, Soldier must still support the children IAW AR 608-99.

- *A court order is in place, but it does not mandate support* – Soldier is not required to provide any support, assuming there is no other court order or agreement with a support provision.

- *Soldier's spouse physically abused the Soldier* – Soldier is not required to provide spousal support under the regulation, so long as the abuse is substantiated by conviction, restraining order, or family advocacy finding. If there are children, Soldier must still support the children IAW AR 608-99.

- *Soldier's family member is in jail* – Soldier is not required to provide support, but cannot collect BAH-WITH solely because of this family member.

- *Soldier is legally divorced from his spouse* - absent an agreement or order to the contrary, a Soldier's obligation to support his ex-spouse terminates upon divorce. Soldier must still support his children.

- *Soldier has provided support to the spouse for 18 months* – provided they have been separated for 18 months, Soldier has provided the required support for the entire 18 months, civilian courts are available to order support, Soldier has not acted to prevent a court ruling on support, and Soldier is not receiving BAH-WITH solely on basis of providing support to spouse or agrees to terminate the BAH-WITH.

- *Soldier's child is in the custody of another who is not the lawful custodian* – applies only when Soldier is the lawful custodian of the child and is diligently pursuing physical custody.

No release from support obligation
The Soldier is NOT excused from providing financial support under AR 608-99 to his family member simply because:

- *The Soldier does not receive BAH*

- *The Soldier's spouse engaged in adultery, abandoned the Soldier, or engaged in other improper or immoral behavior.*

- *The Soldier "cannot afford" the payment*

- *The Soldier paid other expenses on the family members' behalf* – payment of other expenses (excluding rent or mortgage payments) does not lessen the Soldier's support obligation UNLESS the family member has agreed, IN WRITING, to accept the payments in lieu of the normal support obligation.

Method of payment
Cash, check, money order, electronic fund transfer, voluntary allotment, or garnishment will satisfy the support obligation. The Soldier should keep records of all payments. The best method of payment is by voluntary allotment; cash payments are HIGHLY discouraged due to the absence of proof.

Timing of payment
If there is a court order or agreement, support is due on the date indicated in the order or agreement. If there is no such order or agreement, payment must be made by the first day of the month following the month for which the support payment is designated. For example, the support payment for the month of June must be personally delivered or mailed by the first of July.

What to do if the Soldier fails to provide required support
Complaints about a Soldier's failure to provide the required support should be referred to the Soldier's company commander. The Soldier's commander may order the Soldier to comply with his support obligation and may

pursue punitive or adverse administrative actions against the Soldier. A Legal Assistance Attorney can answer additional questions and can contact the Soldier's commander. Complaints may also be directed to IG.

FREQUENTLY ASKED QUESTIONS

What if my spouse makes more money than I do?

If there is a court order or agreement, you must still pay support according to the order or agreement. Absent such an agreement, you may ask your Brigade or Battalion commander (in certain circumstances) to exempt you from the support obligation. However, you still have an obligation to provide support to your children.

What if I have other family members to support?

If you have a legal obligation to provide support to other individuals, you are required to divide the applicable BAH RC/T rate equally among them. For example, if you have two family members living with you and one living apart from you, you must provide the family member living apart with one-third of the applicable BAH RC/T rate.

I live in Government Quarters and I don't receive full BAH; do I still have to pay?

Yes! The applicable BAH RC/T rate is the minimum amount you must pay, regardless of whether you receive BAH or not if your family members reside off-post.

Do I still have to pay support after I'm divorced?

Absent a continuing court order, you do not have to provide financial support to your ex-spouse. You do, however, still have an obligation to provide support to your children.

What if the Soldier pays bills equal to the amount of BAH instead?

Soldiers get credit for payment of their spouse's non-governmental housing contractual expenses e.g. rent, real property taxes, property insurance, and mortgage payments. However, unless there is a written agreement stating the Soldier may pay other bills instead of sending the applicable BAH RC/T amount, the Soldier must pay the applicable BAH RC/T amount directly to his spouse. (See "Payment in Kind" paragraph on first page).

Do I still have to pay support if both my spouse and I are on active duty?

If there is a court order or agreement, you must still pay support according to the order or agreement. Absent such an agreement, neither Soldier is required to provide financial support to the other. However, the Soldier still has an obligation to provide support to his/her children.

What if I refuse to pay my spouse and/or family members the amount required by AR 608-99?

AR 608-99 is a punitive regulation. Soldiers who fail to comply with the regulation are subject to punishment under the UCMJ (violation of a lawful general regulation under Article 92; violation of a lawful order from a commissioned officer or noncommissioned officer under Articles 90, 91, or 92), as well as to adverse administrative actions, including a discharge.

WHO DO I CONTACT IF I NEED MORE INFORMATION? Fort Campbell Client Services Office, Building 2765 Tennessee Ave, across from Military Courthouse, (270) 798-4432.

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