

## **COMMANDER'S GUIDE IN HANDLING CASES OF NON-SUPPORT**

### **1. PURPOSE:**

This guide should be used to assist the commander in completing a commander's inquiry into an allegation of non-support violations. It is a recommended procedure extracted from **AR 608-99**, Family Support, Child Custody and Paternity, dated 29 October 2003. As per AR 608-99, commanders are responsible for thoroughly and expeditiously investigating claims of nonsupport against soldiers in their command.

### **SOLDIER MUST COMPLY WITH COURT ORDERS AND WRITTEN SUPPORT AGREEMENTS**

Under Army Regulation 608-99, a soldier is required to provide financial support to family members and to obey court orders on child custody. This obligation exists even if the family is separated geographically because of military service. The dollar amount of this support is measured by what is stated in any court orders or written support agreements. In the absence of a court order or written support agreement containing a financial support provision, a soldier will provide interim minimum financial support which is based upon an amount equal to the soldier's Basic Allowance for Housing (BAH-II) at the with-dependents rate for the soldier's rank.

### **2. INTERIM MINIMUM FINANCIAL SUPPORT:**

Soldiers will provide interim minimum financial support for their family members until a court order or written support agreement is obtained. The specific amount of the financial support will depend on the number of family members, whether the soldier is supporting more than one family unit, and whether the husband and wife are both in the military.

**Single Family Unit:** If the soldier has only one family unit to support (no children from a prior relationship), then he or she will provide the following financial support:

- If the soldier's family is not living in Government family housing, the soldier will provide financial support equal to the soldier's BAH-II at the with-dependents rate. This will be provided even though the soldier is not receiving BAH-II or is occupying Government family Housing.
- If the soldier's family is living in Government family housing, no financial support is required. When the supported family members move out of Government family housing, support will be provided at an amount equal to BAH-II at the with-dependents rate.

**Multiple Family Units:** For example, if the soldier has been married before and has a current spouse or children from more than one marriage, then each supported family member will receive a pro-rata share of the BAH-II at the with-dependents rate. Each family member's share will be determined by dividing the amount equal to the BAH-II at the with-dependents rate by the total number of supported family members (excluding former spouses). Family members who must be supported include the **current spouse, children, and adopted children.**

The payment of any pro-rata amount, however, will be paid in the following order and manner:

- First, any court-ordered support will be paid as stated in the decree.
- The remaining family members who do not reside in Government family housing will receive a pro-rata amount of the BAH-II at the with-dependents rate. This will be regardless of the amount of support provided to other family members.

### **3. PROCESS FOR COMPLETING A COMMANDER'S INQUIRY INTO AN ALLEGATION OF NON-SUPPORT:**

**1. STEP ONE:** Determine the soldier's financial support obligation.

- a. Determine whether the soldier has:
  1. A financial support agreement. (See AR 608-99, paragraph 2-3.)
  2. A court order. (See AR 608-99, paragraph, 2-4 and 2-11b (1) & (2).)
- b. If the commander finds that there is no support agreement or support order as stated above, the support provisions of AR 608-99, Financial Support Required in the Absence of a Financial Support Agreement or Court Order, paragraph 2-6, apply.
- c. If the soldier states that no financial obligation or support requirements exist, ensure all provided documents have been reviewed by SJA to relieve the soldier from financial obligation. If the soldier is receiving BAH at the "With Dependent" rate, you should verify what BAH rate the soldier is entitled to receive.
- d. If it is unclear whether the soldier has a financial obligation IAW AR 608-99, the commander should contact the Administrative Law Section of the SJA Office and get a legal opinion.
- e. If the soldier admits that he/she has a financial obligation, determine the source of the financial support obligation and verify proof of payment. The following are valid proofs of payment:
  1. Money Order receipts with proof of payment or command verification of receipt of payment by the spouse/recipient.
  2. Verification of support payment by allotment. (Allotment not available for National Guard.)
  3. Cancelled checks with recipient's endorsement on the check.
  4. Other monetary payment methods with command verification of receipt of payment.

5. The command will provide details on the verification of payment when responding to the IG or JAG.

2. **STEP TWO:** Direct compliance by counseling the soldier in writing.

- a. Confirm to the soldier that a financial obligation to provide support exists.
- b. Determine the appropriate form and timing of financial payments IAW AR 608-99, paragraph 2-7.
- c. Determine whether the soldier is in compliance with the support requirements.
  1. **Compliance.** Verify that all appropriate documentation that the soldier provides is IAW AR 608-99. If the soldier is in compliance, the commander will document this determination and attach all pertinent documentation.
  2. **Noncompliance.** For noncompliance, the provisions listed at paragraph 3-10 (Enforcement) apply. Action should be taken to bring the soldier into compliance with AR 608-99. If the soldier is not in compliance, the commander will document a complete summary of the soldier's failure to comply with AR 608-99, as well as what actions will be taken to bring the soldier into compliance.
  3. Note: **Sometimes the commander receives an excuse that the soldier does not have any money to pay the support or the soldier is not drawing BAH and therefore is not required to pay support. These responses are not acceptable.**
  4. Note: **The soldier should make his or her family support payment a priority above all other financial obligations. This is very important, as in many cases there are children involved and the spouse has no money for their basic needs.**
- d. Counsel the soldier in writing on what his/her support obligation is under AR 608-99. Here are a few things to include as a part of the counseling:
  1. Inform the soldier that he/she has a legal obligation to support his/her family members, and may seek legal assistance through the SJA office.
  2. Inform the soldier that he/she has not fulfilled his/her obligation and is in violation of Army Regulation 608-99.
  3. Explain what corrective action is necessary to be in compliance with AR 608-99.
  4. Explain accepted forms and timing of payments, IAW AR 608-99, paragraph 2-7.
  5. Give him/her an order to comply with the provisions of AR 608-99. Provide a suspense date (use good judgment when assigning – not too long nor too short) for

compliance to the soldier to request written proof of compliance. (See paragraph 3-6b.)

6. Inform the soldier of the actions available to the command when dealing with violations of the regulation. Listed are some actions available to the commander:

- |                                       |                               |
|---------------------------------------|-------------------------------|
| (a) Counseling                        | (d) Non-judicial punishment   |
| (b) Letter of Reprimand or Admonition | (e) Court-Martial             |
| (c) Bar to Reenlistment               | (f) Administrative separation |

7. Note: A soldier cannot fall into arrears without violating AR 608-99. (See AR 608-99, paragraph 2-5c for the details on arrears.)

3. **STEP THREE:** Verify compliance. The commander must verify that the soldier initiates appropriate financial support. If the soldier chooses to start an allotment, the commander is responsible for ensuring the soldier makes interim payments until the allotment is in effect.

5. **STEP FOUR:** Respond to the requester for the Commander's Inquiry.

- a. The responsible commander will send a reply in response to each inquiry within 14 days of its receipt.
  1. Commanders failing to provide a response by the suspense date may be in a violation of AR 608-99, Paragraph 3-5a.
  2. The Battalion/Squadron commander will be notified of company commanders who fail to provide a timely response.
  3. The Battalion/Squadron commanders must also be informed of any allegation of repeated or continuing violations of AR 608-99 as stated in Paragraph 1-4f(5)(b).
  4. For example, a soldier who seeks to take advantage of a PCS move or change of command to stop support payments, in order to avoid those payments until the new chain of command becomes aware of the problem, could be considered a repeat offender.
- b. Also include a statement as to whether the allegation of non-support is either substantiated or not substantiated.
- c. Provide copies of supporting documents to show compliance or corrective action taken IAW the provisions of AR 608-99.
- d. In accordance with AR 608-99, paragraph 3-6b (5), commanders should notify the appropriate Finance office for BAH recoupement action against a soldier who is drawing

BAH, but is not in compliance and chooses not to pay arrearages. The Finance Office may then ensure that the appropriate BAH is returned to the government.

**6. STEP FIVE:** Continue to monitor the support requirements of the soldier in the future months.