

MILPERSMAN 1754-030

SUPPORT OF FAMILY MEMBERS

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Governing Directive	BUPERSINST 1610.10
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1. **Policy.** The Navy will not act as a haven for personnel who disregard or evade obligations to their legal family members. All members shall provide adequate and continuous support for their lawful family members and comply fully with the provisions of separation agreements and valid court orders. Any failure to do so which brings discredit upon the naval service may be cause for administrative or disciplinary action, which may include the initiation of court-martial proceedings, and may ultimately lead to separation from the naval service.

2. **Sufficient Support.** Every person has an inherent natural and moral as well as a legal obligation to support their legal family members. In many states the failure to support one's legal family member is a criminal offense. What is adequate or reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved only in a civil court of competent jurisdiction. Some of the salient factors that may be taken into account are the pay, private income, and resources of the person and the family members; the cost of necessities and every day living expenses; financial obligations of the family members; and the expenses and financial obligations of the person in relation to their income.

3. **Navy Limitations.** The Department of the Navy is neither vested with the statutory authority nor in possession of the facilities to adjudicate matters that are of a purely civil nature. In all cases involving members of the Navy it is desired that the amount of support to be given for family members be

established by mutual agreement between the parties concerned or be adjudicated in the civil courts.

4. Support

a. In those cases where the amount of support has not been fixed by competent court order or mutual agreement, the support scale set forth below may be used as a guide until such time as a mutual agreement is reached or a court order obtained. This scale is intended only as an interim measure and as a guide to the extent that major factors affecting the ability to provide support, the resolution of which cannot await a decision of the civil courts or the eventuality of a mutual agreement, may be considered to effect equitable adjustments to the support scale. Because of the inherent arbitrary and temporary nature of the support scale set forth below, it is not intended to be used as a basis for any judicial proceeding. To do so would lend excessive credence to an administrative tool which has been designed for use only internally within the Navy.

Number of family members and amount of support to be provided in the absence of a mutual agreement or court order:	
Spouse only	1/3 gross pay
Spouse and one minor child	1/2 gross pay
Spouse and two or more children	3/5 gross pay
One minor child	1/6 gross pay
Two minor children	1/4 gross pay
Three minor children	1/3 gross pay

Note: Gross pay will include basic pay and basic allowance for housing if entitled, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

b. The above guide will be referred to only as a basic instrument or means for determining the amount of support to be provided for a complaining family member. For example, if a member has a present spouse and child and a complaint of nonsupport or insufficient support is received on behalf of two children of a former marriage, in the absence of an agreement or court ruling, the member should provide about one-fourth of their gross pay for the two children of the former marriage. If the complaint is on behalf of the present spouse and child, the member should provide about one-half of their gross pay for the spouse and child. The indication of three-fifths gross pay for

a spouse and two or more children is applicable only when the family members are in the same household. If a member has a spouse and four or more children, they should be advised of their moral obligation to contribute more than three-fifths of their gross pay.

5. Legal Obligation

a. The laws of most jurisdictions in the United States impose a legal obligation upon a person to support their spouse. Exemptions from support of a lawful spouse may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the spouse, mutual agreement of the parties or a waiver of the naval support requirement granted by the Director, Dependency Claims, Navy Military Pay Operations, a division of Defense Finance and Accounting Services (DFAS).

b. If the member feels that they have grounds for a waiver of support of their spouse, the Director, Dependency Claims, Navy Military Pay Operations, DFAS, acting under the policy guidance of Navy Personnel Command (NAVPERSCOM), may grant such a waiver for support of a spouse, but not children, on the basis of evidence of desertion without cause, physical abuse, or for infidelity on the part of the spouse.

c. A member may submit a request for a waiver of support of their spouse to the following address:

Defense Finance and Accounting Service
Cleveland Center
Code PMMACB
1240 East Ninth Street
Cleveland, Ohio 44199

A request must include a complete statement of the facts including substantiating evidence and comments or recommendation of the commanding officer. Substantiating evidence may consist of:

(1) An affidavit of the servicemember, relative, disinterested person, public official, or law enforcement officer. Affidavits of the servicemember and relatives should be supported by corroborative evidence. All affidavits must be based upon personal knowledge of the facts. Statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(2) Written admissions by the spouse contained in letters written by them to the servicemember or other persons.

(3) Waiver requests submitted on grounds of physical abuse must be corroborated by evidence including the following types: medical reports, police reports, statements from witnesses, chaplains, counselors or social workers.

6. **Basic Allowance for Housing (BAH)**

a. Family members, for whom basic allowance for housing are payable, are defined by law. Members are expected to comply with the terms of court orders or divorce decrees by courts of competent jurisdiction which adjudge payments of alimony even though basic allowance for housing is not payable.

b. Entitlement of members to basic allowance for housing on behalf of family members is provided by statute. No member shall be denied the right to submit a claim or application for basic allowance for housing and no command shall refuse or fail to forward such a claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of their knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the application and serves no useful purpose as such cases are thoroughly investigated by the Navy Family Allowance Activity. That activity obtains dependency affidavits from the parents. Any person, including a member or family member, who obtains an allowance or allotment by fraudulent means is subject to criminal prosecution.

7. **Desertion or Misconduct.** The duty of a person to support their minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the marriage through divorce unless the judicial decree or order specifically negates the obligation of either person to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the member of their inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a

child or children or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child or children under the following conditions:

a. Where the location and welfare of the child or children concerned cannot be ascertained.

b. Where it is apparent that the person requesting support for a child does not have physical custody of the child or children.

8. **Adopted Child**. The natural parents of an adopted child are relieved of the obligation to support the child since this obligation is assumed by the adoptive parents. A member who contemplates the adoption of a child or children should be aware of the legal obligation to provide continuous support for the child or children during its or their minority.

9. **Noncompliance**. Noncompliance with court ordered child support and/or alimony could result in the garnishment of the member's pay under Public Law 93-647.

10. **Minor Children**. Members who have minor children and contemplate divorce should be informed of the advisability of having support provisions incorporated in the court order or divorce decree to preclude later disputes. Courts and attorneys are occasionally misled into placing provisions in separation agreements and decrees to the effect that the member will pay whatever amount the Armed Forces pay or require to be paid for support of the child or children. Ambiguous phrases should be avoided. No attempt will be made to break down the basic allowance for quarters with respect to how much would be applicable for a spouse, child, or other dependent. Such ambiguous orders of support or agreements will be considered the same as if they were silent with respect to the amount of support to be provided. The interests of all concerned will be better served if the amount of support to be provided is settled in fixed terms by agreement or court order at the time of separation.

11. **Commander's Responsibilities**

a. The responsibility of every commanding officer is to make sure all enlisted personnel under their command are informed of Navy policy and expectations regarding support of family members and the possible consequences of separation for misconduct for failure to discharge their just obligations. Married personnel at sea or stationed overseas shall be counseled and encouraged to make provisions for continuous allotments to their dependents in amounts sufficient to enable their spouses to meet the family obligations at home.

b. Upon receipt of a complaint alleging that an enlisted member is not adequately supporting their lawful spouse and/or children, the member shall be interviewed and informed of the policy of the Navy Department concerning support of family members. In the absence of a determination by a civil court or a mutual agreement of the parties, the support guide above is applicable. The member shall be advised of their legal and moral obligations as well as their rights in the matter. The member shall be informed that their naval career may be in jeopardy if they do not take satisfactory action. The member may become ineligible to reenlist or extend their enlistment and they will be subject to administrative or disciplinary action that may result in their separation from the Navy.

c. Justifiable complaints of nonsupport or insufficient support against an enlisted member, with no indication of satisfactory progress toward establishing an acceptable solution, will be considered as evidence of misconduct. In such cases action shall be taken as specified in the article on discharge for misconduct in this Manual.

12. **Non-Support Complaint**

a. A complaint of nonsupport or insufficient support concerning an officer shall be acted on by the commanding officer, after advising the officer concerned of their rights in the matter, as follows:

(1) Upon receipt of a written complaint alleging that an officer of their command is not adequately supporting their legal spouse and/or children, the commanding officer shall have

the officer interviewed for the purpose of instructing them as to the Navy Department's policy concerning support of family members and to obtain a written statement of the officer's position and intentions.

(2) When the complaint is received directly from the family member concerned or a legal representative, the commanding officer shall, after obtaining the officer's written statement, promptly advise the writer of the Navy Department's policy in matters of this nature in addition to a brief summary of the officer's contentions and intentions, as obtained from their written statement.

(3) When a complaint is received via senior naval authority (usually NAVPERSCOM), the commanding officer shall obtain from the officer a written statement and return it to the senior naval authority. Prior to forwarding the officer's statement, the commanding officer shall include in their endorsement a statement of the officer's gross pay together with such comments as may be deemed appropriate.

b. If in the opinion of the commanding officer, the officer concerned has repeatedly disregarded the provisions of a valid court order, or the terms of a current mutual agreement, or the provisions of this article in such a manner as to bring discredit upon the naval service, the commanding officer may consider nonjudicial punishment or recommendation for court-martial. The fact that an officer is involved in a matter concerning the nonsupport of a legal spouse and/or children, should not be the sole factor for considering these actions.

13. **Action.** Action of the officer concerned:

a. Upon receipt of correspondence alleging their failure to contribute adequately to the support of their legal spouse and/or children, and on the request of their commanding officer, the officer concerned will execute a statement setting forth the following:

(1) Amount and method of contributions to legal family members during 12-month period preceding receipt of complaint.

(2) Amount being contributed monthly as of date of receipt of complaint.

(3) Amount to be contributed monthly in the future and the method by which payments will be made.

(4) If amounts are less than that provided in the support guide above, state the reasons.

(5) Further information pertinent to the matter which the officer desires to call to attention of NAVPERSCOM.

(6) Whenever possible, a photostat or certified copy of any pertinent court order or voluntary mutual agreement should be appended.

b. In the absence of a determination by a civil court or a mutual agreement of the parties, the support guide above is applicable.

14. **Fitness & Evaluation Reports**. Fitness and evaluation reports may reflect disregard of the provisions of this article if such disregard has brought discredit upon the naval service, or has interfered with performance, or raises questions concerning the advisability of promotion, advancement, or selection for specific assignments. Fitness and evaluation reports may not be used as punishment, or in lieu of appropriate disposition under the Uniform Code of Military Justice. Comments in fitness and evaluation reports must pay due regard to the prohibitions in BUPERSINST 1610.10 against discussing the activities of a spouse or family member. All reports mentioning nonsupport of family members must be treated as adverse and referred to the officer or enlisted member reported on for a statement.
