

VOLUME 9

“DEPENDENT SUPPORT AND PATERNITY”

SUMMARY OF VOLUME 9 CHANGES

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The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by *blue font* (left header) will reflect the date this Volume was last updated.

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VOLUME VERSION	SUMMARY OF CHANGE	ORIGINATION DATE	DATE OF CHANGES
ORIGINAL VOLUME	N/A	DD MMM YYYY	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
3000 Marine Corps Pentagon
Washington, DC 20350-3000

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VOLUME 9: DEPENDENT SUPPORT AND PATERNITY

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REFERENCES

- (a) SECNAVINST 5430.7R CH-1
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2016 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
- (j) MCO 1001.62B
- (k) MCO 1200.18
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
- (u) JAGINST 5801.2
- (v) 37 U.S.C. §§ 601-604
- (w) 38 U.S.C. §§ 4301-4334
- (x) DoD Instruction 1205.12
- (y) 31 U.S.C. § 1342
- (z) DoD Instruction 1100.21
- (aa) 8 U.S.C. § 1400
- (bb) Executive Order 13269, (July 3, 2002)
- (cc) DoD Directive 2311.01E
- (dd) MCO 3300.4A
- (ee) DoD Directive 2310.01E
- (ff) DoD Directive 5146.13
- (gg) Executive Order 12333, (December 4, 1981)
- (hh) DoD Directive 5240.01
- (ii) DoD 5240.1-R
- (jj) DoD Instruction 3025.21
- (kk) DoD Instruction 5525.03
- (ll) SECNAVINST 5710.25B
- (mm) 1 U.S.C. § 112b
- (nn) 22 CFR Part 181
- (oo) DoD Directive 5530.3
- (pp) DoD 5500.07-R
- (qq) 18 U.S.C. § 202
- (rr) 5 C.F.R. § 2634

“REFERENCES”

As changes are made within this MCO Volume, the References list will also update.
Annotation of each update/change/addition to the References list is required.

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VOLUME 9

“DEPENDENT SUPPORT AND PATERNITY”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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DEPENDENT SUPPORT AND PATERNITY

0101 PURPOSE

This Volume establishes Marine Corps policy regarding financial support of dependent family members. This Order does not authorize a commanding officer to divide marital property or allocate marital debts; that is a matter left to agreement between the parties, or, in the absence of an agreement, to the courts. Family support issues are closely aligned with readiness, morale, discipline, and the reputation of the Service. The provisions of this Volume may serve as the basis for a commanding officer to issue a lawful order to a Marine to provide family support. For purposes of this Volume, “commanding officer” means a commanding officer with Special Court-Martial Convening Authority. Marines who fail to provide adequate support for their dependent family members in accordance with a lawful order or who fail to comply with the terms of a written support agreement signed by both parties, civil court orders, decrees, or judgments issued or recognized by a United States court concerning family support, may be subject to administrative or disciplinary action, which can include nonjudicial punishment, the initiation of court-martial proceedings and/or administrative separation proceedings. Commanding officers who receive a complaint of nonsupport against a member of another Service component attached to their command should process the complaint in accordance with the member’s Service regulation (MILPERSMAN 1754-030; AR 608-99; AFI 36-2906; COMDINST M1000.6A, Ch. 8). The activity responsible for this Volume is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps.

0102 PRESENCE OF SEPARATION AGREEMENT OR COURT ORDER

What is adequate or reasonably sufficient support is a highly complex and individual matter, dependent on numerous factors and should be resolved by mutual agreement between the parties or a civil court of competent jurisdiction. Marines shall comply fully with the provisions of written support agreements signed by both parties and court orders, decrees, or judgments issued or recognized by a United States court addressing the support of family members.

010201. If a court order establishes the amount of support, a commanding officer shall counsel the Marine regarding his or her obligation to comply with the order and may issue a lawful order to comply, but may not order additional support even if the amount of support provided for in the court order is less than the support that would be payable under the guidelines set forth in this Volume.

010202. Upon court issuance of a final divorce decree, temporary order for support, or the establishment of a written support agreement signed by both parties, the obligation to provide interim support amounts as provided in this Volume are no longer applicable.

010203. A court order, such as a decree of divorce, which is silent on the issue of child support does not negate a Marine's obligation to support his or her biological or adopted minor children. Until a court order or written agreement of the parties exists that specifically addresses the issue of child support, a commanding officer can order child support in accordance with this Volume.

010204. A court order that paternity has not been established ends a Marine's obligation to provide interim support for a child under this Volume (unless the Marine has adopted the child), and the commanding officer may not order interim support for that child.

010205. For purposes of this Volume, the phrase “court orders” shall include administrative support orders and their functional equivalents. Unless a court order for support issued by

a foreign country is recognized by a United States court, commanding officers may not require compliance.

010206. Absent a written support agreement signed by both parties or court order, and conditioned upon a complaint of nonsupport made by or on behalf of the nonsupported party to a commanding officer, the support standards set forth in this Volume shall be enforced as interim measures until the issues are resolved in court or settled by written support agreement signed by the parties. Depending on available resources, legal assistance offices may assist in drafting marital separation agreements, parenting agreements, and child support agreements and in preparing uncontested divorce pleadings.

010207. A commanding officer may not require the parties to enter into a marital separation agreement as a condition for Early Return of Dependents (ERD) from Outside Continental United States locations. Conditions for ERD are found in Joint Travel Regulation (JTR), Ch. 5, and MCO 1300.8, Marine Corps Personnel Assignment Policy.

010208. The support standards set forth in this Volume apply only to a Marine's spouse, minor biological children, and minor adopted children. For purposes of this Volume, "minor" means an unmarried child less than 18 years of age.

010209. All children born in wedlock are presumed to be the biological children of the Marine and the Marine's spouse, unless (1) rebutted by a DNA or blood paternity test conducted by a licensed facility which reasonably concludes that the Marine is not the father of the child in question; (2) a court order exists eliminating parentage; or (3) there exists a factual impossibility of paternity (e.g., the child was conceived and born within a period during which the Marine was deployed, and did not leave the deployed location or have contact with the mother).

010210. The standards for support set forth herein do not extend to stepchildren or other DoD-recognized dependents of the Marine, unless the child has been adopted by the Marine.

010211. There is no requirement under this Volume for spousal support between active-duty military spouses.

010212. The application of the standards contained herein shall commence only after the commanding officer has received a complaint of nonsupport. Support shall be calculated starting from the date on which a complaint is received by the commanding officer. Retroactive support shall not be ordered; however, recoupment of housing allowance may result in accordance with the JTR, Ch. 10.

0103 COMPLAINTS OF INADEQUATE SUPPORT

010301. All complaints alleging inadequate support of family members shall be directed to the commanding officer of the Marine concerned.

010302. In the absence of extraordinary circumstances, the commanding officer shall meet with the Marine and take appropriate action under this Volume within five working days of the commanding officer receiving the complaint. If the Marine who is the subject of the complaint is not assigned to the command receiving the request for support, the commanding officer shall forward it to the commanding officer having authority to take action, and shall inform the complaining party of the action

taken as soon as possible. If the commanding officer is unable to initiate action within five working days, the commanding officer shall so advise the party seeking support.

010303. When a complaint alleging inadequate support of family members is received, the commanding officer shall inform the Marine about the nature of the complaint, and shall encourage the Marine to consult with a legal assistance attorney. After the Marine has had a reasonable opportunity to consult with counsel, the commanding officer shall then meet with the Marine and determine the content of an order or warning, if any, to be given to the Marine to ensure compliance with this Volume. The Marine may not be compelled to disclose the substance of confidential communications with a legal assistance attorney.

010304. In instances where a request for support is made for a child born out of wedlock, the Marine shall only be required to provide interim support under this Volume when paternity is established by court or administrative order, or formal written acknowledgement by the Marine. Prior to responding to paternity allegations, the Marine shall be encouraged to consult with a legal assistance attorney regarding the full consequences of an admission of paternity. Notably, some states hold that an admission of paternity creates a legal presumption that paternity is established, and that based upon such an admission, a court may order the payment of child support.

0104 INTERIM FINANCIAL SUPPORT STANDARDS

010401. The interim support standards set forth herein are not intended for use outside the Marine Corps or as part of any civilian judicial proceeding.

010402. The JTR, Chapter 10 addresses housing allowances. A Marine must comply with JTR regulations in order to be authorized to receive his or her housing allowance.

010403. In cases where the amount of support has not been fixed by court order or written support agreement signed by both parties, and upon a complaint of nonsupport to a commanding officer, each family member entitled to support under this Volume shall receive, at a minimum, a pro-rata share of the applicable Basic Allowance for Housing or Overseas Housing Allowance to which the Marine is entitled, as reflected below.

Total Number of Family Members Entitled to Support (not including the Marine)	Share of Monthly BAH/OHA per Requesting Family Member
1	1/2
2	1/3
3	1/4
4	1/5
5	1/6
6 or more	1/7 or etc.

010404. The number of family members entitled to support under this Volume does not include (1) a Marine’s former spouse, regardless of whether the Marine is providing financial support to the former spouse; (2) a Marine’s present spouse who is on active duty in one of the military services; or (3) a family member for whom the Marine is not required to provide financial support under this Volume,

or for whom the Marine has been released by his or her commanding officer from the regulatory requirement to provide financial support under this Volume.

010405. Commanding officers should refer to the JTR, Chapter 10, which details various types of Marine and family member living arrangements that will affect BAH/OHA eligibility. The intent of this Volume is to ensure that Marines provide, at a minimum, support consistent with their BAH/OHA eligibility.

010406. Under no circumstances shall the total amount of support paid to all family members entitled to support exceed 1/3 of the Marine's gross military pay per month. Gross military pay is defined as the total of all military pay and allowances before taxes and other deductions.

010407. The Marine may request the commanding officer deviate from the amount of interim support required under this Volume. If the facts of the particular case are consistent with one of the reasons for modification as set forth in paragraph 0105, the commanding officer may decrease or terminate the amount of interim support to be paid, but only after consulting with the appropriate Staff Judge Advocate.

010408. Financial support established by a commanding officer under this Volume shall continue until such time as a written support agreement signed by both parties is reached, a court order is obtained, or the commanding officer modifies or terminates the interim support order in accordance with paragraph 0105.

0105 MODIFICATION OF INTERIM FINANCIAL SUPPORT REQUIREMENTS

010501. A commanding officer has discretion (but is not required) to reduce or eliminate the interim financial support standards under certain circumstances as listed in paragraph 010504 below, but only after consulting with the appropriate Staff Judge Advocate. A commanding officer does not have authority to reduce or eliminate the interim financial support standards in any situation not listed in paragraph 010504 below. Note that while a commanding officer may reduce, or in certain cases completely eliminate, a support requirement under this Volume, reduction of support below "BAH DIFF" may render the Marine ineligible for BAH under applicable regulations. Marines should be directed to visit their local administrative section to determine future housing allowance eligibility.

010502. The Marine has the burden of coming forward with sufficient information and documents (for example, receipts, tax returns, pay vouchers, court orders, etc.) to establish a basis for a commanding officer's action under this paragraph.

010503. A commanding officer must be satisfied by a preponderance of the evidence that the underlying intent of this Volume (to provide adequate and continuous support to dependent family members) would be furthered before he or she may reduce or eliminate the interim financial support standards established herein. Before granting relief, the commanding officer should when practical contact the family member requesting support for whatever additional information may be necessary to make an informed decision on the matter.

010504. The following constitute situations warranting consideration of reduction or elimination of financial support requirements:

A. The gross income of the spouse exceeds the gross military pay of the Marine (including allowances). The income of the non-Service Member spouse will be based on his or her wages, before deductions are taken for taxes, voluntary allotments, and garnishments, together with income from all other sources, such as interest, dividends, and profits derived from property in that spouse's possession. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children; or

B. The parties have been separated for twelve (12) months or longer; the Marine has made the financial support required in paragraph 0104 for the entire twelve (12) months (including instances where the Marine has voluntarily complied with this Volume in the absence of a complaint for support to a commanding officer); and, the Marine has not acted in any manner to avoid service of process or to otherwise prevent a court from ruling on the issue of support, except to enforce rights afforded the Marine under the Service Member's Civil Relief Act or state equivalent. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children; or

C. The Marine has been the victim of physical abuse by a spouse seeking support. Evidence of physical abuse may include, but is not limited to: police reports, a court judgment amounting to a conviction for the offense, issuance of a permanent restraining order (or similar order) against the complaining spouse, or other reliable evidence. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children; or

D. The Marine is paying regular and recurring obligations (such as rent or consumer debts) for the dependent family member(s) and such regular and recurring payments are of sufficient magnitude and duration as to justify a reduction or elimination of support specified herein. If the commanding officer elects to give credit for such payments, the credit should be limited to the extent that such payments do not benefit the Marine, and should continue for as long as support is paid under this Volume. This includes a situation where the Marine's family is residing in base housing, and as a result the Marine does not receive BAH. In this situation, the Marine's commanding officer may reduce or even eliminate the Marine's financial support requirement, depending on the specific circumstances; or

E. The commanding officer's next senior officer in the chain of command determines that releasing the Marine from the obligation to pay interim support is a matter of fundamental fairness, given the totality of the circumstances. The senior commanding officer must seek the advice of the appropriate Staff Judge Advocate before making such a determination.

010505. If relief from interim support is granted, the commanding officer shall notify the complaining spouse, in writing, of his or her decision.

0106 FORM AND TIMING OF FINANCIAL SUPPORT PAYMENTS

010601. Unless otherwise required by court order or by written support agreement signed by both parties, a financial support payment shall be made to the dependent family member or legal custodian of a minor by check, money order, electronic transfer, or dependent support allotment.

010602. Unless otherwise required by a court order or by a written support agreement signed by both parties, the commanding officer shall establish the date(s) support will be paid each month.