

# **Module 3**

## **Service of Process on Military Personnel**

## **TRAINING NOTES**

**THIS MODULE IN ITS ENTIRETY MAY NOT BE APPROPRIATE FOR ALL CASE WORKERS. THE COMPLEXITY OF SOME OF THE MATERIAL (SUBSECTIONS 3.2.2.1, 3.2.2.2, AND SECTION 3.4.2) MAY BE MORE APPROPRIATE FOR SENIOR STAFF AND/OR ATTORNEYS. THE TRAINER MAY DELETE THOSE PORTIONS OF THE MODULE THAT ARE NOT RELEVANT OR APPROPRIATE TO THE TARGET AUDIENCE.**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 3-1: Service of Process on Military Personnel**.
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 3.
3. Explain the goals and objectives of this module.

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### ***What you need to know***

1. It takes approximately one hour and 15 minutes to complete this module.
2. Listed below are the equipment, handouts, and PowerPoint Slides needed for the module.

### **Equipment/Supplies:**

- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

### **PowerPoint Slides**

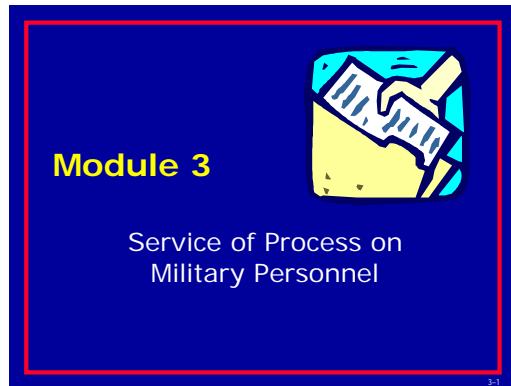
- 3-1: Service of Process on Military Personnel
- 3-2: Types of Jurisdiction
- 3-3: Personal Jurisdiction over Member
- 3-4: Obtaining Personal Jurisdiction over Military Member
- 3-5: Long Arm Jurisdiction
- 3-6: Long Arm Jurisdiction (cont'd)
- 3-7: United States Installations
- 3-8: Voluntary Acceptance of Service
- 3-9: Overseas Methods of Service
- 3-10: Service on Board a Ship
- 3-11: Exercise Scenarios
- 3-12: Summary

### **Handouts:**

- 3-1: USM-94
- 3-2: Service Contacts for Assistance
- 3-3: Excerpts from Hague Service Convention
- 3-4: Review Exercises

## MODULE 3: SERVICE OF PROCESS ON MILITARY PERSONNEL

Time: 1 hour, 15 minutes



### 3.1 SERVICE OF PROCESS ON MILITARY PERSONNEL

#### 3.1.1 Learning Goal

- Each participant will understand the methods and procedures for the service of civil process on military personnel located on United States military installations and ships in United States waters, and for military personnel located at overseas locations.

#### 3.1.2 Learning Objectives

- Given a participative lecture, participants will demonstrate an understanding of how to serve process on military personnel stationed at military locations in the United States and what limitations may be encountered.
- Given a participative lecture, participants will demonstrate an understanding of how to serve process on military members who are located at overseas installations or on ships in non-United States waters.
- Through a discussion of scenarios, participants will identify issues related to service of process on military personnel and propose solutions.

## TRAINING NOTES

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### *What you need to say/do*

1. Display **PowerPoint Slide 3-2: Types of Jurisdiction**.
2. Explain the difference between personal jurisdiction and *in rem* jurisdiction.

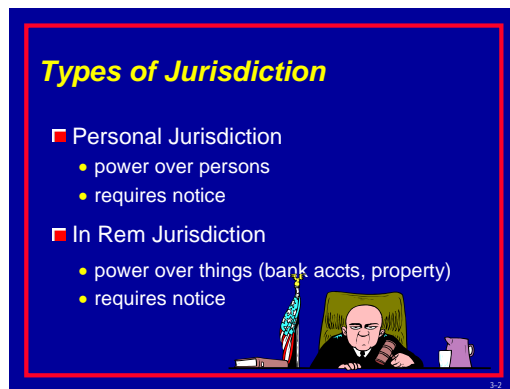
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### *What you need to know*

## 3.2 JURISDICTION OVER MILITARY PERSONNEL

### 3.2.1 Overview

The first step in establishing or enforcing a support obligation against a military member is location of the member. Assuming that location is not an issue, the next critical step is obtaining jurisdiction. Obtaining jurisdiction over military members is similar to obtaining jurisdiction over civilians. Military service, however, creates interesting issues.



First, let's discuss the basics of jurisdiction. Some legal actions, like paternity or support establishment, require personal jurisdiction over the military member. Other legal actions, like seizure of a bank account, require jurisdiction over the military member's property or asset. Common to both types of jurisdiction is the requirement that the person must receive notice of the proceeding. Notice is accomplished through service of process.

### 3.2.2 Personal Jurisdiction

Personal jurisdiction over the petitioner (e.g., child support obligee) usually is not an issue; by bringing the legal action, the person is consenting to the tribunal's jurisdiction over him or her.

## **TRAINING NOTES**

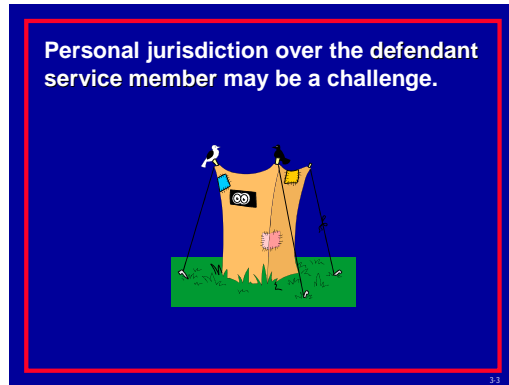
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### ***What you need to say/do***

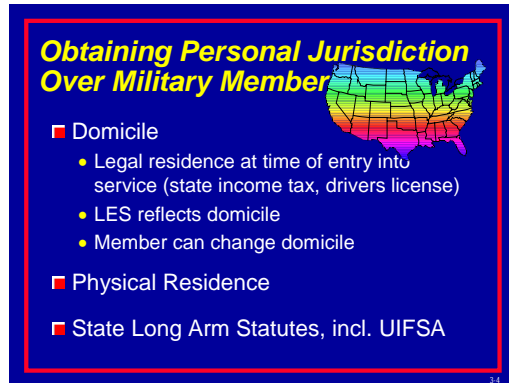
1. Display **PowerPoint Slide 3-3: Personal Jurisdiction over Member.**
2. Display **PowerPoint Slide 3-4: Obtaining Jurisdiction over Military Member.**
3. Explain how a military member's domicile and residence may or may not be the same.
4. Field 44 of the leave and earnings statement (LES) will show a service member's legal domicile, but does not give the member's physical residence or location. See **Handout 6-2** in the Appendix.

### ***What you need to know***

1. A military member retains legal residency in the state in which he or she entered military service, unless the member takes affirmative acts to change his or her legal residence/domicile. The main reason for a change in domicile is state income tax laws. The military leave and earnings statement (LES) notes the state of domicile or legal residency that the member claims in field 44.



Personal jurisdiction over the defendant may be more problematic.



Personal jurisdiction can be based on a person's domicile, physical residence, an act within the state that gave rise to the cause of action, or "minimum contacts."

### 3.2.2.1 *Domicile*

A person's domicile is not always the same as his or her physical residence. This is especially true with the military. Domicile requires intent: A person is domiciled in a state if he intends to make that place his fixed home for legal purposes at least for the time. A military member generally keeps the domicile he or she had at the time he or she entered military service. Box 44 of the military member's Leave and Earnings Statement (LES) will reflect that state as the member's domicile until the member actively changes it for state income tax purposes. See **Handout 6-2** in the Appendix. Therefore, the LES will always

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-4: Obtaining Jurisdiction over Military Member**.
2. Explain to participants that when the Uniform Interstate Family Support Act (UIFSA) requires “residence,” it is referring to physical residence, not domicile. The Official Comment to Section 205 expressly states that “residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.” However, there is UIFSA case law in some states that equates a military member’s residence with where a military person claims legal domicile.
3. Display **PowerPoint Slide 3-5: Long Arm Jurisdiction**.
4. Explain to participants that UIFSA’s long arm provisions for establishment and enforcement of support apply to military members just as they do to civilians.

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### ***What you need to know***

1. Section 201 of UIFSA, which is the long-arm provision for establishment of a support obligation against a nonresident, includes as bases of jurisdiction that:
  - the individual resided with the child in the forum state
  - the individual resided in the forum state and provided prenatal expenses or support for the child
  - the child resides in the forum state as a result of the acts or directives of the individual.
2. Section 205 of UIFSA (as amended in 2001) defines continuing, exclusive jurisdiction to modify a child support order:
  - (a) A tribunal of this State that has issued a child-support order consistent with the law of this State has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:
    - (1) at the time of the filing of a request for modification this State is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
    - (2) even if this State is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order.
  - (b) A tribunal of this State that has issued a child-support order consistent with the law of this State may not exercise continuing, exclusive jurisdiction to modify the order if:
    - (1) all of the parties who are individuals file consent in a record with the tribunal of this State that a tribunal of another State that has jurisdiction over at least one of the parties who is an individual or that is located in the State of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
    - (2) its order is not the controlling order.



reflect where a member claims domicile or legal residence for state income tax purposes. It is important to note, however, that the LES does not show the physical residence of the service member. Often a military member's domicile is one state, but his or her physical residence is another, or many others, for the member's entire military career.

### **3.2.2.2 *Physical Residence***

Jurisdiction based on physical residence is especially important in an interstate case. Every state has enacted the Uniform Interstate Family Support Act (UIFSA). In both the long arm provision of UIFSA, discussed below, as well as its definition of "continuing, exclusive jurisdiction," the Act refers to "residence." A tribunal may decide that a military member has two residences: his state of legal domicile and the state where he is physically stationed. According to the reporter to the Act, the tribunal that is able to most accurately determine the ability of the noncustodial parent to pay support (and therefore should hear the case) is in the state of the parent's current physical residence.

### **3.2.2.3 *Long Arm Jurisdiction***

State long arm jurisdiction statutes provide a means for a court or administrative tribunal to exercise personal jurisdiction over a military member who is not a resident in the state. The Uniform Interstate Family Support Act (UIFSA) contains a very expansive long-arm statute for use in the establishment and enforcement of support obligations. It can be used to obtain personal jurisdiction over a nonresident military member, just as it can over a nonresident civilian.

## TRAINING NOTES

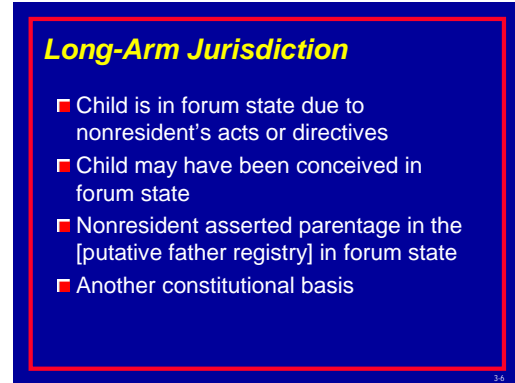
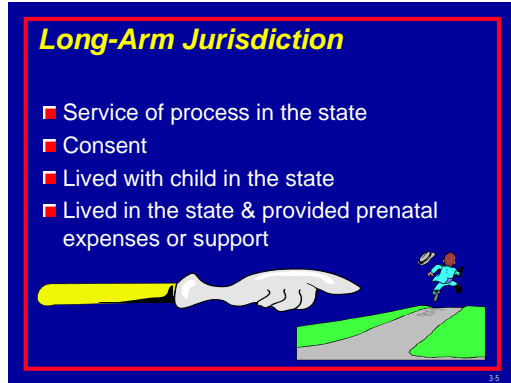
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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-5: Long Arm Jurisdiction**.
2. Define service of process for participants.
3. With regard to “personal service within the forum state,” provide participants with a **Practice Tip**: Ask the member’s commanding officer when the member has scheduled leave. A good time to attempt personal service is during the holidays.
4. Explain to participants that they can serve process on military members in much the same manner as on civilians. However, military members may often be moving targets because of reassignments.
5. Inform the participants that there is no central service of process location or organization for the entire military or for each military department.
6. Display **PowerPoint Slide 3-6: Long Arm Jurisdiction (cont’d)**.

### ***What you need to know***

1. According to UIFSA’s Official Comments, the intent of the 2001 changes to Section 205 were not substantive, but rather to clarify the original intent of the Drafting Committee: “. . . [S]ubstitution of the term “is the residence” for the term “remains the residence” makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. Thus, if there is but one order, it is the controlling order in effect and enforceable throughout the United States, notwithstanding the fact that everyone has left the issuing State. If the order is not modified during this time of absence, a return to reside in the issuing State by a party or child will immediately identify the proper forum at the time of filing a proceeding for modification. Although the statute does not speak explicitly to the issue, temporary absence should be treated in a similar fashion. Temporary employment in another State may not forfeit a claim of residence in the issuing State, *State ex rel. Havlin v. Jamison*, 971 S.W.2d 938 (Mo. App. 1998). Of course, residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.”



UIFSA authorizes a tribunal to exercise jurisdiction over a nonresident if:

- the individual is personally served with [citation, summons, notice] within the forum state;
- the individual submits to the jurisdiction of the forum state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- the individual resided with the child in the forum state;
- the individual resided in the forum state and provided prenatal expenses or support for the child;
- the child resides in the forum state as a result of the acts or directives of the individual;
- the individual engaged in sexual intercourse in the forum state and the child may have been conceived by that act of intercourse;
- the individual asserted parentage in the [putative father registry] maintained in the forum state by the [appropriate agency]; or
- there is any other basis consistent with the constitutions of the forum state and the United States for the exercise of personal jurisdiction.

### 3.2.3 Service of Process

In order to obtain jurisdiction over an individual, due process under the United States Constitution also requires notice of the proceeding. “Process” is a legal document that compels an individual (or entity) to appear in court or to comply with a demand by a court. Service of process is the delivery of the document to the individual to notify him or her of a claim or charge against the individual, or to inform the individual of specific acts that he or she is required to perform. While

## **TRAINING NOTES**

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### ***What you need to say/do***

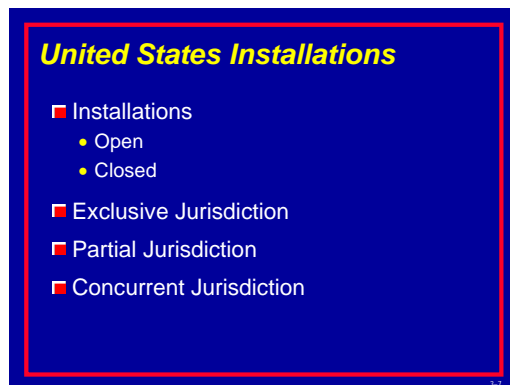
1. Identify the three methods for service of process that are applicable to both civilians and military members who reside off base.
2. Display **PowerPoint Slide 3-7: United States Installations**.
3. Explain to the participants that a military installation is very similar to a city, with all of the normal amenities associated with city life.
4. Explain the concept of an "open" versus a "closed" installation and how it affects access to the installation. After 9/11, most installations are closed or are in the process of becoming closed installations.

### ***What you need to know***

1. Military members are located all over the United States and the world. The transient nature of military service can often make service of process a challenging event. The procedure for service of process on military members is similar to the procedures for civilians, but certain aspects will be different depending on the military member's location.
2. The actual service of process on a military member who resides in the civilian community is the same as that on a civilian. Military status, in and of itself, does not insulate a military member from service of process.

military members may live on an installation, the vast majority live in the neighboring communities surrounding the installation. These members can be treated as any other person subject to a state's service of process procedures and jurisdictional requirements. Methods for service of process include mail, voluntary acceptance of service, and personal service by a civilian authority – depending upon the type of action that is being brought. For example, under most state laws, establishment of an initial support obligation requires voluntary acceptance of service or personal service by an authorized official. If a military member resides on a military installation, you can still serve the member with process. However, there are some limitations that will apply.

### 3.3 UNITED STATES MILITARY INSTALLATIONS



Military installations in the United States exist in every state. Their personnel may live in barracks-type apartment dwellings, as well as in family style housing in neighborhoods. As you may have noticed if you have ever driven by or through an installation, its appearance is often very much like a city, with neighborhoods, commissaries or grocery stores, fast food franchises, gas stations, and shopping centers. Military installations may be "open" or "closed." Members of the public, without any special permit or status requirements, usually freely travel throughout an "open" installation. A "closed" installation has "checkpoints" manned by security that requires those entering the installation to have special vehicle permits or identification cards, or possess some need to enter the installation. Closed installations are becoming the norm.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-7: United States Installations**.
2. Explain the difference between exclusive, partial, concurrent, and proprietary jurisdiction.
3. Provide an example of how process would be served in each of the different types of installations.
4. Refer participants to **Handout 3-2: Service Contacts for Assistance**.

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### ***What you need to know***

1. In an exclusive Federal jurisdiction with no State reservation for service of process, military authorities can merely inform the military member of the request to serve process and seek voluntary acceptance. On installations with concurrent or proprietary jurisdiction, or where service of process has been reserved by the State, a civilian official may serve process on the installation. Virtually no installation is exclusive Federal jurisdiction with no State reservation for process.
2. If state service of process is permitted on a military installation, the service of process is usually centralized to prevent civilian law enforcement or process servers from disrupting military activities.
3. Both the Army and Navy have published rules for service of civil process within the United States. Army regulations are at 32 C.F.R. § 516.10 (2001). They provide that on Federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent or proprietary jurisdiction, the commander or supervisor will first determine if the individual wishes to accept service voluntarily. If the member declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the installation commander.

### **3.3.1**

### **Service by Mail**

Many enforcement actions do not require personal service. If service by mail is acceptable under the forum state's law, you can send a first class letter or certified or registered letter, return receipt requested -- depending upon what the law requires -- to the obligor's military address. Military facilities and naval craft have post offices so even "return receipt requested" service is available.

### **3.3.2 Personal Service**

If the remedy requires personal service -- e.g., an establishment action or a contempt action -- you may have more difficulty obtaining service. Military installations in the United States fall within one of four categories of legislative jurisdiction: exclusive, partial, concurrent, and proprietary jurisdiction. These distinctions, often rooted in decades-old documents in which the various states ceded land to the Federal government for military installations, are very important with regard to serving state process on military members located on the installations.

- *Exclusive Federal Jurisdiction with No State Reservation for Service of Process:* There are a few exclusive Federal jurisdiction installations where a state official cannot serve process on the installation. The installation's central point of contact for service of process will determine if the military member wishes to voluntarily accept service of process. The member will be advised to consult with a military or private attorney about the legal effect of voluntary acceptance. If the member decides not to accept service, the authority requesting service will be so informed, along with the explanation that exclusive Federal jurisdiction prevents service by state authorities on the military installation.
- *Partial Jurisdiction:* On partial jurisdiction installations, the state has retained the power to apply its laws in some areas while in remaining matters Federal law controls. On virtually all partial jurisdiction installations, the states have retained the power to serve process.
- *Concurrent and Proprietary Jurisdiction:* If the military installation is under concurrent or proprietary jurisdiction, the state has the right to serve process on the installation according to state laws. A sheriff or other proper civilian official may therefore enter the installation, contact the local military police, identify the person to be served, and attempt service. The installation's central point of contact for service of process will facilitate service using the procedure put in place by the installation or garrison commander.

## **TRAINING NOTES**

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### ***What you need to say/do***

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### ***What you need to know***

1. The installation's legal office can provide information regarding how process is served on a particular installation. Where state service of process is permitted, usually either the Provost Marshall or the installation's law enforcement section will assist with service.
2. Regulations governing the Navy and Marines are at 32 C.F.R. § 720.20 (2001). In order to protect against interference with mission accomplishment and to preserve good order, service cannot be made without the commander's consent. Where practical, the commanding officer of a naval installation will require that the process be served in his presence or in the presence of a designated officer. The regulations distinguish a request to serve process aboard an installation that is made by a process server from a state court in the jurisdiction where the naval station is located from a request that is made by an out-of-state process server. In the former case, regulations provide that the command ordinarily should not prevent service of process so long as delivery is made in accordance with reasonable command regulations. If service is permitted, the commander should designate an appropriate location where the process server and the member can meet privately. Where the process is to be served by someone from an out-of-state jurisdiction, the named military member is not required to accept service. Therefore, the process server and the member need not meet face-to-face. Rather, the process server should report to the designated command location while the member named is contacted and advised that he may accept or refuse service.
3. Army Regulation 27-40, Litigation, sets forth the policy of the Army on service of process.



The best way to determine an installation's type of jurisdiction is to call the installation legal office. The installation legal office can also inform you of the policies and regulations governing service of process on the installation. Service of process on an installation is often centralized in order to control and monitor the presence of civilian law enforcement or other civilian authorities, as well as to provide for an orderly procedure that will have the least impact on the installation and its mission. The installation provost marshal or law enforcement section is the usual conduit.

If you experience problems with service of process on a military installation, your first call should be to the legal assistance office for the installation involved. Establishing and maintaining a good relationship with the installation legal office will assist you greatly in carrying out your duties. Remember, military authorities with questions concerning service of process will ask the installation legal office, or their legal advisor, about what is permissible and what is not. Military members who are not subject to compulsory process will also often seek legal help from the installation legal assistance office. If a legal assistance attorney on behalf of a military member contacts you about your state's laws regarding service of process or child support, inform him or her of the possible consequences for delays in establishing or enforcing an order, such as an award of retroactive support or the accrual of an arrearage.

## **TRAINING NOTES**

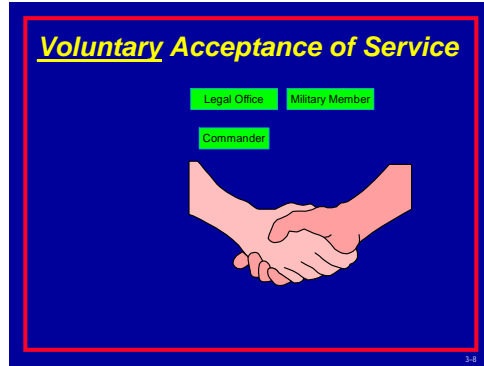
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### ***What you need to say/do***

1. Display **PowerPoint Slide 3-8: Voluntary Acceptance of Service.**
2. Explain the role of the military legal assistance office with respect to advising military members faced with child support and service of process issues.
3. Highlight the fact that while military commanders may not serve process, they can be a valuable asset in persuading a military member to voluntarily accept service. Give the participants an example of how a failure to accept service could affect readiness. For example, the accumulation of an arrearage in excess of \$5,000 precludes the issuance of a personal passport that may be needed for a mission requirement.
4. Explain that there are few restrictions to service of Federal process on a military installation.

### ***What you need to know***

1. A service member's personal passport ("blue" passport) falls under the Federal law prohibiting the issuance or renewal of a passport when the person owes more than \$5,000 in child support arrears. A "red" or official passport may not. However, many countries require a personal passport, even if the person is travelling on official government business.



Contacting a military member's commander may also assist in obtaining voluntary acceptance of service. If communicating with the commander by mail, ask the officer to provide the service member the opportunity to accept service. Enclose with the request the summons, a copy of the complaint or motion, and a return of service for the commander or other official to complete. In the letter to the commander, mention the possible negative effects if the member fails to accept service. The military commander cannot serve process for you. He or she can, however, discuss with the military member the potential consequences of his or her failure to take care of civilian proceedings concerning child support, which may include adverse effects on a military member's readiness.

Service of process for Federal courts has fewer limitations than service of process for state courts. Regardless of whether the installation is exclusive or concurrent Federal jurisdiction, civil officials are permitted to serve Federal process. The only restrictions are those reasonable restrictions that the installation or garrison commander imposes.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Explain to the participants that they can serve process on military members overseas in the same manner as on military members in the United States.
3. Provide the participants with the **Practice Tip** that if service by certified mail, return receipt requested, has been unsuccessful due to the failure of the military member to accept service, they should enclose a second set of documents in an envelope to the military postal officer of the APO or FPO where the military member is located, seeking assistance with delivery.
4. The benefit of certified mail, return receipt requested, is that the status of the letter can be tracked through the United States Postal Service website.

### ***What you need to know***

1. The date that a service member is expected to return from an overseas assignment is known as the DEROS. This date can be found in personnel documents and may be useful in determining whether attempts at overseas service are viable or whether it is better to wait until the service member returns to the United States.

### 3.4 OVERSEAS INSTALLATIONS AND LOCATIONS



Serving process on military members located at overseas locations or on a ship can be a bit more difficult compared to service at United States locations. It is important to remember, though, that the same general rules concerning service of process apply.

#### 3.4.1 Service by Mail

Just as with United States installations, service of process by mail, if permitted by your State, is an easy and efficient method of service. Military postal clerks follow the same guidelines as the United States Postal Service. Although the address may be an Army Post Office (APO) or Fleet Post Office (FPO), it is still U.S. mail, and again, certified mail and “return receipt requested” services are available.

If you do not receive a return receipt for service sent to an overseas installation, prepare a second set of documents and place them in an envelope addressed to the military member, with the return receipt affixed and postage paid. Place this envelope into a larger one and address the outside envelope to the military postal officer for the APO or FPO where the military member is located. Include a memo to the postal official that details your previous efforts to obtain a return receipt and ask that proper postal procedures be followed to deliver the envelope to the military member and to send the return receipt to you.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Identify four alternatives to service by mail on a military member located on an overseas installation or location.
3. Refer participants to **Handout 3-3: Excerpts from the Hague Convention**. Discuss the concept of a central authority under the Hague Convention and what role it plays in service of process overseas.

### ***What you need to know***

1. Service of process overseas may be accomplished through a variety of methods, each with their strengths and limitations. The laws of the host nation -- in addition to any conventions, treaties, or Status of Forces agreements -- may affect the method and manner in which process may be served.
2. Korea and most other Far Eastern countries are not signatories to the Hague Conventions.
3. The best source of information on service of process in overseas locations is the United States Department of State website at [www.state.gov](http://www.state.gov).

As long as you have the number for the certified mail you sent, you can go to the United States Postal Service website at [www.usps.com](http://www.usps.com) to track the mail's status.

### **3.4.2 Alternative Methods of Service Abroad**

If service of process by mail is not permitted, a variety of alternative methods are available depending on the specific state and foreign law involved, including:

- Service by a Foreign Authority Pursuant to a Treaty or Convention
- Personal Service by a Foreign Agent (Foreign Attorney or Process Server)
- Voluntary Acceptance of Service
- Service by a Letter of Request (Letters Rogatory) to a Foreign Authority

Each method has its strengths and limitations. For detailed information on service of process in overseas locations, see the Department of State website at [www.state.gov](http://www.state.gov).

#### ***3.4.2.1 The Hague Convention***

The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents codifies service of process by international registered mail and by a foreign agent. It is in force in 73 countries, covering virtually all of the nations where United States military members are stationed. An exception is Korea, which is not a signatory. The full text of the treaty can be found in the Martindale-Hubbell International Law Digest, Vol. III. It is a subset of the 27 volume Law Directory. The treaty text can also be found in the appendix to Federal Rule of Civil Procedure 4. The latter resource is particularly useful because it lists any special requirements of the signatory nation; for example, some countries require that the documents be translated into their language.

Advantages of the Hague Convention are its relative ease and lower expense as compared to other methods of service abroad. A limitation is the length of time it

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display PowerPoint Slide 3-9: Overseas Methods of Service.
  2. The request form under the Hague Convention merely states the name and address of the person to be served and the desired method of service.
  3. The Convention spells out three alternative methods of service:
    - service according to the local law of the foreign jurisdiction to which the request was sent;
    - service by a particular method specified in the request; or
    - service by delivery to the addressee if he or she agrees to voluntarily accept it.
  4. Have the participants look at **Handout 3-1: USM-94**, located in the Appendix. Walk the participants through the serving process under the Hague Service Convention.
  5. Refer participants to **Handout 3-2: Excerpts from the Hague Convention**.
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### ***What you need to know***

1. A child support worker should closely heed the following caveats in all cases where service is attempted through the Hague Convention:
  - read and follow the Convention to the letter;
  - carefully check the “Declarations” of the country in which he or she is seeking service (e.g., some countries object to certain forms of service);
  - always provide a translation of the documents to be served even if the recipient country does not require it;
  - be certain that he or she has selected a form of service that will satisfy state law for the type of action that is being brought in the United States;
  - include a warning and detailed summary putting the military member to be served on notice of the legal effect of the service; and
  - allow sufficient time for the recipient member to meet any deadline for response or to retain legal representation.
2. Effective June 1, 2003, Process Forwarding International (PFI) began acting as United States Central Authority on contract to the U.S. Department of Justice, managing all formal service of process inside the U.S. on judicial documents under the following treaties and conventions:
  - The Hague Service Convention (incoming documents)
  - Inter-American Convention on letters Rogatory (incoming and outgoing documents)
  - Letters Rogatory from non-convention countries.The contract includes the completion and return of process service within six weeks of receipt by PFI, Internet tools to track the service on-line, fee-based language translation, photo copying, and locate services. See [www.hagueservice.net](http://www.hagueservice.net).
3. The United States has a number of Status of Forces Agreements with governments throughout the world. Most of these agreements relate solely to defense related matters and many are classified. Some SOFAs address matters concerning service of process on military members located in a particular country.



takes; service through the Hague Convention is typically a six to nine month process. Service under the Hague Convention is accomplished through a country's "Central Authority." The central authority is the designated office or official, usually the Ministry of Justice, to which a request for service of process is sent. The names and addresses of the central authorities for all member countries are listed in the Convention. The request for service is sent using a Request for Service Form (USM-94), which can be obtained from a local office of the United States Marshal's Service. See **Handout 3-1: USM 94**.

The completed USM-94 and allied documents to be served, with accompanying translations, if applicable, should be mailed directly to the foreign central authority by "any competent authority or judicial officer." The U.S. Marshal will not transmit the form to the central authority. Rather, the court, or agency/ attorney representing the agency should execute the portion of the Form USM-94 marked "identity and address of the applicant," and the "name and address of the requesting authority." Reference to the authority for the request must be included in the request. State that the request is made pursuant to Rule 4(c)2(A), United States Federal Rules of Civil Procedure, and any other pertinent Federal or State law.

Unless requested otherwise, the central authority itself or its designee will serve process according to the laws for the service of process upon its own citizens. If personal service is required, it must be so noted on the form. Generally, no fees are incurred for service of process through the central authority. A central authority may bill costs of personal service in a remote location. On the reverse side of the Request for Service Form, there is a Certificate of Service form that the central authority will return to the requesting party once service is completed.

It is important to remember that a central authority may not always serve process on members of the United States military. Issues that may preclude service include Status of Forces Agreements (SOFA) and other bilateral agreements between a foreign nation and our military forces.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Explain the reciprocity agreements that exist between states and a number of countries with respect to enforcement of child support and service of process.

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### ***What you need to know***

1. Section 459 of the Social Security Act authorizes the Department of State and the Department of Health and Human Services to enter into agreements with foreign countries for child support enforcement. On May 19, 2000, the Department of State issued a public notice in the Federal Register [Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 65 Fed. Reg. 31,953 (May 19, 2000)] regarding progress in this area. Additional notices will continue to update this information as new agreements are completed. As of the date of initial posting, the U.S. had Federal reciprocal arrangements in force with Australia; the Canadian Provinces of Nova Scotia, Manitoba, and British Columbia; the Czech Republic; Ireland; Poland; Portugal; and the Slovak Republic. The United States is also participating in the Hague Conference on Private International Law's work to achieve a new multilateral treaty on child support enforcement.
2. Pursuant to UIFSA, states may also enter into reciprocal agreements with foreign countries. Currently, there are reciprocal agreements between a number of states and Australia, Austria, Bermuda, some Canadian provinces, the Czech Republic, England, Fiji, Finland, France, Germany, Hungary, Ireland, Jamaica, Mexico, New Zealand, Northern Ireland, Norway, Poland, Scotland, the Slovak Republic, South Africa, and Wales. See [http://travel.state.gov/child\\_support.html](http://travel.state.gov/child_support.html).

No Latin American country has ratified the Hague Convention. However, in 1975 and 1979, the Organization of American States countries (OAS) entered into a Convention in Panama called the Inter-American Convention on Letters Rogatory and Additional Protocol. Similar to the Hague Convention, it is in force with 12 Central and South American countries. The United States has ratified it, noting a reservation only to Article 2b that pertains to evidence. The process for service is similar to the Hague Convention, with slight changes made in the forms used, and the requirements for certifications by a clerk of court. No standard form exists for service under this convention.

#### **3.4.2.2 *Personal Service by a Foreign Agent***

This method of service is usually expensive. It is imperative that you verify with the State Department's Office of Citizens Consular Affairs or an attorney in the foreign country that you are complying with the country's current law.

You may be able to use UIFSA to seek assistance with personal service if the State Department has declared the country to be a foreign reciprocating country or political subdivision (see [http://travel.state.gov/child\\_support.html](http://travel.state.gov/child_support.html)), or if your state, as the initiating state, has a reciprocal support agreement with the country in question. In most states, the Attorney General's Office is the place to contact to determine with which countries the state has an agreement.

#### **Voluntary Acceptance of Service**

If state law requires personal service, the caseworker can attempt to contact the military member or his commander and request the voluntary acceptance of service. This is often a useful first step. The consequences of failing to abide by a support order, which could lead to an order to show cause for contempt, can have much greater significance to a military member stationed overseas. That is especially true if the military member is required to return to the United States in order to attend civil proceedings.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Explain the letter "rogatory" or letter of request, emphasizing that it is time-consuming and often inefficient.
3. Discuss how combat may affect the ability of a IV-D office to serve process.
4. Display **PowerPoint Slide 3-10: Service on Board a Ship**. Explain how a service member stationed on a ship can be served by mail.

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### ***What you need to know***

1. 32 C.F.R. § 720.20 (2001) states that if service of process is attempted from out-of-state by mail and refused by the member, the refusal should be noted and the documents returned to the sender. Questions should be referred to the staff judge advocate, command counsel, or the local naval legal service office.

### 3.4.2.3 *Letter of Request*

A Letter of Request (or Letter Rogatory) is a request from a court in the United States to a court in a foreign country requesting assistance in obtaining evidence (covered in module 5), or in effecting service of process. A letter of request is particularly used in countries where no other method of service is available. Preparing letters of request can be a time-consuming, complicated, and frustrating process. Unless no alternative exists, a letter of request should be a last resort.

### 3.4.3 Combat Situations

Problems that arise in attempting to serve process on military members can be compounded in situations where the military member is involved in contingency, or even combat, situations. Military members may be away from their normal military installation either in the United States or in a foreign country and involved in a variety of operations that may keep them away from their "home" bases for months, or even years on end. These temporary duty locations may not be able to be disclosed or may constantly be changing within a particular operation. Under such a circumstance, you may be better off seeking to have the military enforce its own support requirements, without a court order, as an interim measure.

### 3.4.4 Service on Board a Ship



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-10: Service on Board a Ship**.
2. Explain procedures for obtaining personal service on a military member located on a ship.

### ***What you need to know***

1. The Federal requirements for attempting re-service are similar to the requirements for repeating unsuccessful locate activities.

For military members that are aboard a ship outside United States waters, the best method for service of process is through the mail, if your particular state's law permits such service. Even military members on a ship will have an APO (Army Post Office) or FPO (Fleet Post Office) address in the United States. If necessary, follow the procedures noted earlier to seek assistance in obtaining a return receipt. Explain to the officer-in-charge of the service member's military postal office that you never received a return receipt when you first mailed the notice, and request that proper mailing procedures be followed and that you receive a receipt upon the delivery of the enclosed letter to the service member. Naval regulations provide that if the member refuses service by mail, the refusal will be noted and the documents returned to the sender.

If personal service is required by state law, you can attempt voluntary acceptance of service by the military member. Again, it may be useful to send the member's commanding officer a letter requesting the commander's assistance in service of process. The commander cannot serve the member with process. However, you can ask the commander to explain the consequences of failing to respond to a child support action.

It is more difficult to personally serve the military member when he or she is "on land." In times of military alert, information about where a ship will port while at sea is information that the military is unlikely to disclose. It may be necessary to delay service of process until the ship returns to its "home" port, whether in the United States or at an overseas location.

### **3.5 DILIGENT EFFORTS TO SERVE PROCESS**

Federal regulations governing locate responsibilities of state IV-D agencies require that the states create guidelines defining "diligent efforts to serve process." Specifically, when prior efforts to serve process are unsuccessful but adequate information exists in the case to justify additional attempts to serve process, the guidelines must provide for a periodic repeat of efforts to serve process.

## **TRAINING NOTES**

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### ***What you need to say/do***

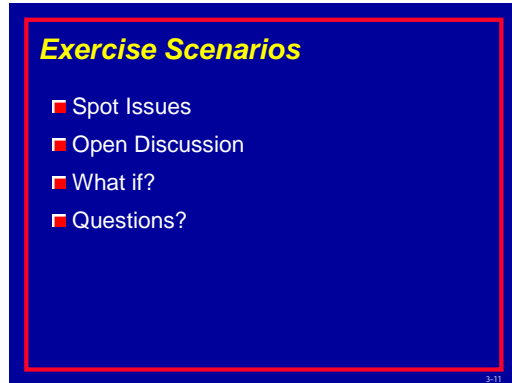
1. Display **PowerPoint Slide 3-11: Exercise Scenarios**.
2. Pass out **Handout 3-4: Review Exercises**. Have the participants count off into groups of 4. Ask them to read and discuss the exercise scenarios within their groups. Each group should identify a recorder who will note the issues related to service of process and the group's proposed answers. Inform participants that they will have 15 minutes to complete the two exercises.
3. At the end of 15 minutes, facilitate a class discussion of the questions at the end of each exercise scenario and the groups' proposed answers. Ensure that each group has a chance to respond to a question.
4. Ask participants if they have any questions related to the material presented.
5. Display **PowerPoint Slide 3-12: Summary**. Review the topics discussed in Module 3.
6. Preview topics that will be discussed in Module 4.

### ***What you need to know***

1. The answers to the exercise scenarios are in the Appendix.
2. Once the participants have come back together, allow up to 15 minutes to discuss their proposed answers to the scenario questions.



### 3.6 EXERCISES



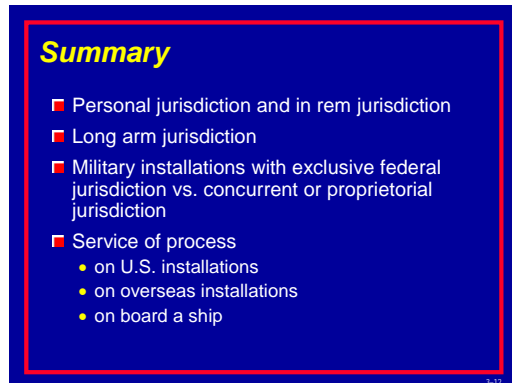
**Exercise Scenarios**

- Spot Issues
- Open Discussion
- What if?
- Questions?

3-11

**Handout 3-4** presents scenarios that involve service of process on military members in the United States and overseas locations. After dividing into groups, designate a recorder. Within your group, identify the issues related to service of process and answer the questions posed at the end of each scenario. At the end of the specified time period, everyone will reconvene to engage in a class discussion of the groups' proposed responses.

### 3.7 SUMMARY OF MODULE



**Summary**

- Personal jurisdiction and in rem jurisdiction
- Long arm jurisdiction
- Military installations with exclusive federal jurisdiction vs. concurrent or proprietary jurisdiction
- Service of process
  - on U.S. installations
  - on overseas installations
  - on board a ship

3-12

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-12: Summary**. Review the topics discussed in Module 3.
2. Preview topics that will be discussed in Module 4.

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### ***What you need to know***

In this module, we discussed:

- personal jurisdiction and *in rem* jurisdiction
- personal jurisdiction based on domicile, physical presence, and long-arm statutes
- the difference between military installations with exclusive Federal jurisdiction and with concurrent or proprietary jurisdiction
- service of process on U.S. installations
- service of process on overseas installations
- service of process on board a ship.

### **3.8 PREVIEW OF MODULE 4**

In the next module, we will discuss the Servicemembers Civil Relief Act, including:

- its purpose
- its applicability to entry of a default judgment in a paternity or child support proceeding
- the circumstances that require appointment of counsel for the absent military member.

