

Module 5

Obtaining Evidence from the Military

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-1: Obtaining Evidence from the Military** (title slide).
 2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 5.
 3. Ask the participants if they have any experience in trying to obtain evidence from the military concerning child support or paternity establishment, or have attempted to obtain financial information.
 4. Tell the participants to ask questions as they arise and to share any experiences or issues they have encountered.
 5. Explain the learning goal and objectives of the module.
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What you need to know

1. It takes approximately one hour, 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

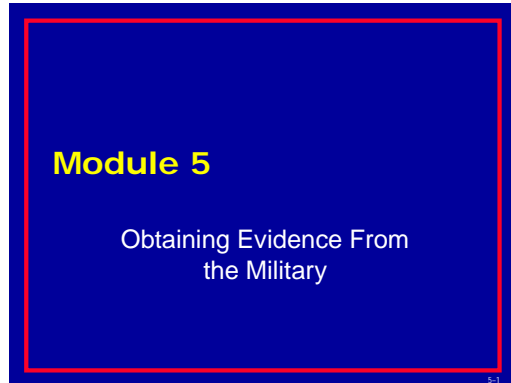
- 5-1: Obtaining Evidence from the Military
- 5-2: Paternity Establishment
- 5-3: Genetic Testing
- 5-4: Financial & Medical Information/Evidence
- 5-5: The Privacy Act and FOIA
- 5-6: Evidence From Overseas Locations
- 5-7: Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters
- 5-8: Evidence from Overseas Location (cont'd)
- 5-9: Exercise Scenarios
- 5-10: Summary

Handouts:

- 5-1: Review Exercises

MODULE 5: OBTAINING EVIDENCE FROM THE MILITARY

Time: 1 hour, 15 minutes



5.1 OBTAINING EVIDENCE FROM THE MILITARY

5.1.1 Learning Goals

- Each participant will understand the rules and established procedures for obtaining evidence and information relevant to paternity and child support proceedings against military personnel.

5.1.2 Learning Objectives

- Given a participative lecture and case study, participants will identify the procedures they can use to obtain genetic testing in paternity cases involving military members, and the limitations on obtaining such evidence.
- Given a participative lecture and case study, participants will explain the procedures for obtaining financial records and information from the Defense Finance and Accounting Service (DFAS), and medical enrollment information from the Defense Enrollment and Eligibility Reporting System (DEERS) for the purpose of establishing and enforcing a child support obligation.
- Given a participative lecture and case study, participants will identify the various authorities that can assist in, and the procedures available for, collecting information or evidence from service members located outside of the United States or its waters.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-2: Paternity Establishment**.
2. Tell participants that without voluntary cooperation by the military member, the military does not have any established method to force compliance for a request for genetic testing to establish paternity.
3. Emphasize to the participants that commanders are required to answer paternity inquiries and inform military members of their legal and moral obligations. Remind the participants of the role that military legal assistance attorneys have.

What you need to know


1. The role of the military is limited in paternity establishment. Commanders cannot order their personnel to submit to genetic testing in order to establish paternity.

5.2 PATERNITY EVIDENCE

Paternity establishment involving military personnel can be a daunting task. It is the area within the child support arena in which the military is most like any other employer. That is, the military and its commanders cannot compel military personnel to provide genetic samples or information for the purpose of establishing paternity.

Paternity Establishment

- Considered a Civilian Matter
- Moral and Legal Obligation of Members
- Commander Obligations on Inquiry



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All of the military services have the same bottom-line concerning paternity establishment. It is essentially a civilian matter to be determined in a civil forum. The services provide the same general guidance with respect to inquiries that pertain to paternity matters involving a military member: Counsel the military member on his legal and moral obligations, and advise him to seek legal counsel on the matter.

Of course, the voluntary cooperation of the military member will expedite the establishment of paternity. To obtain this cooperation, you should first try to contact the military member. Inform him of the paternity allegation and of the process for voluntarily acknowledging paternity. If the member denies paternity, advise him of the availability of genetic testing.

If your initial attempts to obtain voluntary cooperation go unanswered, do not hesitate to contact the member's commander. Policies as to what information a caseworker may divulge will vary from state to state. Ensure that you are aware of your state's privacy protections regarding IV-D client. Always consider obtaining a signed release from the custodial parent that will permit you to disclose such information as is necessary in order to obtain assistance from a service member's commander.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-2: Paternity Establishment.**
2. Explain a military member's general obligations with respect to conduct that may be discrediting.
3. Explain that commanders are greatly concerned about the adverse impact on readiness and operations that civil actions can have.
4. Display **PowerPoint Slide 5-3: Genetic Testing.**

What you need to know

For example, it is usually helpful to detail your unsuccessful efforts to obtain a response from the member and to ask the commander for assistance in having the service member cooperate with the civilian authorities.

It is important to remember that although the military sees the establishment of paternity as a civilian matter that is most properly dealt with through civilian channels, a commander has a vested interest, and often a regulatory obligation, to discuss matters of paternity with one of his or her members. All military members are obligated to be responsible for, and to take care of, personal matters in a manner that does not bring discredit or disrepute upon the military. Civil legal proceedings can potentially affect and interfere with the performance of a military member's assigned duties. Explain to the commander the possible actions that can be taken if the voluntary cooperation of the military member is not received. Emphasize that you are not asking the commander to force or coerce the member into acknowledging paternity, but merely seeking the member's voluntary cooperation to submit to genetic testing. Of course, a threatening tone or tenor to your request will not aid you. However, a respectful, factual statement of the process and its variant negative consequences is appropriate.

For Army personnel, you can request the commander to have the member fill out Department of the Army Form 5459-R, Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries. Once signed by the soldier, this form permits access to Army records that will allow you to obtain necessary information pertaining to a paternity action.

Military commanders are also obligated by regulation to take certain actions with respect to paternity issues and inquiries. For example, *Army Regulation 608-99, Family Support, Child Custody, and Paternity*, 1 November 1994, requires a commander, upon receipt of a paternity inquiry, to:

TRAINING NOTES

What you need to say/do

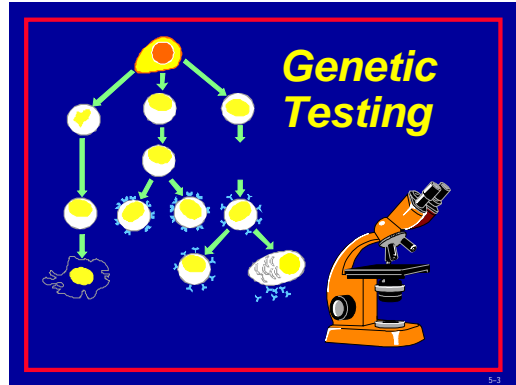
1. Continue to display **PowerPoint Slide 5-3: Genetic Testing**.
2. Discuss the following obligations of a commander with respect to a paternity inquiry:
 - Inform the member of his legal and moral obligations
 - Provide a reply to the requestor
 - Refer the member to legal counsel concerning his rights and obligations.
3. Explain that DoDD 5529.9 may assist in returning a military member back to the United States for proceedings related to child support and paternity. Inform the participants that, although the DoDD does not apply to every situation, it can bring pressure on an individual military member.

What you need to know

1. (DoDD) 5529.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, directs the actions to be taken by commanders and DoD agencies when there is a request for assistance from an agency with respect to child support and paternity. DoDD 5529.9 does not apply to every order. It mainly applies where there is an order for contempt related to child support or paternity or an order to show cause for not being held in contempt. Many of the enforcement provisions of the DoDD give discretion to decision-makers, but because those decision-makers are usually high-ranking military officers (e.g., commanders, Staff Judge Advocates, certain designees of a General Court Martial Convening Authority, and The Judge Advocate's General), that is often enough to gain voluntary compliance by a military member.
2. Pursuant to a 1995 Executive Order requiring the Federal government to act as a model employer, all military hospitals and birthing centers are required to provide the same paternity acknowledgment services as civilian hospitals.

- Inform the military member of his legal and moral obligations;
- Reply to the requestor as to whether the military member admits or denies paternity, and whether the member will provide financial support, and/or submit to genetic testing;
- Refer the member to the legal assistance office for advice on the soldier's rights with respect to the inquiry.

If attempts to obtain the voluntary cooperation of the member fail, the options available for obtaining evidence become more limited. A military commander cannot ordinarily order a military member to submit to genetic testing in order to establish paternity.



A court or administrative order that requires a military member to submit to a genetic test adds to the consequences if the member does not comply, but it does not necessarily permit any additional assistance from the military. An exception to this is Department of Defense Directive (DoDD) 5529.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders. This Directive applies to members stationed overseas, and provides a mechanism to force enforcement of an order that deals with child support, custody, or paternity. However, the proceeding must involve contempt of a court order or an order to show cause why an individual should not be held in contempt for violating an order. It does not assist the caseworker with a basic order to submit to genetic testing for the purpose of establishing paternity, unless as a result of the member's failure to comply, the IV-D agency has filed a contempt action.

TRAINING NOTES

What you need to say/do

1. Prior to beginning section 5.3, display **PowerPoint Slide 5-4: Financial & Medical Information/Evidence**.
2. The Defense Finance and Accounting Service (DFAS) is the central agency for all financial matters within the military. DFAS Cleveland can provide:
 - Historical pay information
 - Physical address of military personnel
3. Information on military pay and allowances is online at the DFAS website. Explanations of the various pay and entitlements, as well as the current DoD pay scale, are also located at the website.
4. Direct the participants to Module 1 for explanations concerning pay grade and rank.

What you need to know

1. Medical and financial information is necessary for establishment, enforcement, and modification proceedings. For information on enforcement, see Module 7.

5.3 FINANCIAL AND MEDICAL INFORMATION

The Defense Finance and Accounting Service keeps military pay and allowance information for individual military members, as well as DoD civilians and retirees. This is the single point of contact from which to obtain the pay and allowance information that is usually needed for child support actions. However, effective May 2003, DFAS will not respond to wage verification requests since the same information is available from the Federal Parent Locator Service (FPLS).

- Financial Information**
 - FPLS
 - DFAS
 - Historical Pay Information
- Medical Information**
 - Defense Manpower Data Center
- Financial/Medical Information**
 - Military Member
 - Commander

You can obtain pay and employment information from DFAS through a request to the FPLS, which includes the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). DFAS can also provide historical pay information and a physical address of military personnel. Although the DFAS Cleveland is the centralized clearinghouse for child support withholdings, there are DFAS centers throughout the country servicing the payroll for the various military branches.

General military pay information is available on the DFAS website at www.dfas.mil, and is also covered in Module 6, at 6.4.2. Information on military pay and allowance amounts is available to the public. Data on current pay entitlements, housing allowances, special pay (hazardous duty, language proficiency, etc.), cost of living adjustments, drill pay for reservists, etc., are all available on the DFAS website, as well as on numerous other websites and publications. The obvious problem is determining the entitlements to a particular military member. Knowing the pay entry basic date (or the number of years of service), pay grade, duty location, military occupational specialty, and other particular aspects of a military member's service is necessary for an exact determination of military pay for a specific individual. However, these pay

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-4: Financial & Medical Information/Evidence**.
2. Explain how to determine if an individual is enrolled in the Defense Eligibility Enrollment Reporting System.
3. Emphasize the implications of the Privacy Act, 5 U.S.C. § 552a, and national security needs on obtaining information from military sources, which often prevent the release of information.

What you need to know

1. For information on how to learn a member's Social Security number, see Module 2: Military Locate Procedures.

resources can be helpful in making estimates and getting a general idea of the pay and allowances being received.

In order to receive medical care from the military through TRICARE (formerly CHAMPUS), an individual must be enrolled in DEERS. To obtain information as to whether someone is enrolled in DEERS, you should contact:

Defense Manpower Data Center
ATTN: CA99
400 Gigling Road
Seaside, California 93955-6771
1-800-538-9552

You will need the name and Social Security number of the military member (the sponsor), and the name, Social Security number, and date of birth of the dependent. According to military representatives, in the overwhelming majority of cases in which IV-D agencies inquire about insurance coverage, the dependents are already enrolled in DEERS; the service member has simply never informed the custodial parent or the custodial parent has forgotten.

Other military sources may also provide pay and medical information. For example, voluntary cooperation from the military member is always an option. The military member's commander may also be a source of information.

The military is limited in the circumstances in which it may release information that is kept in a system of records about one of its members. The Privacy Act precludes the release of most personal information about a military member to third parties. In addition, matters of personnel and operational security may preclude the release of not only information about a specific individual, but also other information, such as addresses, locations, and schedules of military units and their members.

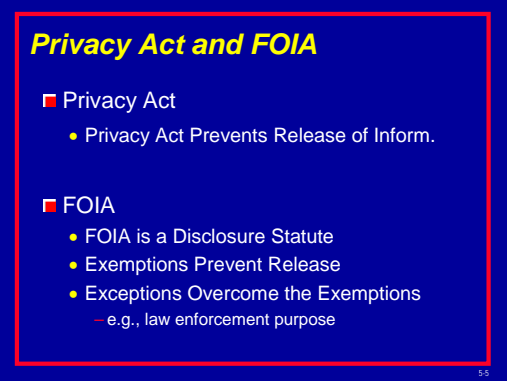
TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-5: The Privacy Act and FOIA**.
2. Tell participants that the Freedom of Information Act (FOIA) is a disclosure statute, requiring the release of material unless an exemption applies. The Privacy Act prohibits the disclosure of personal information without an individual's consent. Under FOIA, an agency must disclose information unless one of the seven exemptions apply. Under the Privacy Act, an agency cannot disclose personal information unless one of the 12 exceptions apply. The Privacy Act and FOIA are meant to be consistent with one another.

What you need to know

1. Information from the military that is often needed in a child support or paternity action is generally exempt from disclosure because it is personal information that is protected by the Privacy Act. Exemption 6 under FOIA is the most often cited exemption for non-disclosure of personal information about military members. Exemption 6 permits the withholding of all information about individuals in personnel, medical, and similar files if its disclosure would constitute a clearly unwarranted invasion of personal privacy. Exemption 1 relates to information that is classified in the interest of national security. This exemption can relate to information on military members that are in classified units, where release of information about the unit members is prohibited.
2. 5 U.S.C. § 552a(b)(7) provides an exception to exemption 6 dealing with personal information. It permits disclosure for law enforcement purposes. Subsection (b)(7) provides disclosure to an instrumentality of any governmental jurisdiction within the United States for a civil or criminal law enforcement activity if law authorizes the activity. The head of the agency must make the request. The request must specify the purpose for which the record is requested and the particular record requested.



Privacy Act and FOIA

- Privacy Act
 - Privacy Act Prevents Release of Inform.

- FOIA
 - FOIA is a Disclosure Statute
 - Exemptions Prevent Release
 - Exceptions Overcome the Exemptions
 - e.g., law enforcement purpose

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Unlike the Privacy Act, the Freedom of Information Act (FOIA) is a disclosure statute. It requires the release of information that is kept in a system of records by the government unless it falls under one of the seven exemptions from disclosure. Personal information that is usually required for child support or paternity actions falls within those exemptions and therefore generally cannot be disclosed under FOIA. There are, however, exceptions under the Privacy Act that permit the government to release information that can be useful to establish and collect child support. The most commonly used exception under the Privacy Act to gain release under FOIA by child support enforcement personnel is one that permits disclosure for law enforcement purposes. The sample FOIA letter in Module 2 provides a template for such a request.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-6: Evidence from Overseas Locations**.
2. Explain to the participants that obtaining evidence, which is physically located in an overseas location, is more difficult than in the United States. However, fortunately they can find most information on overseas military members through resources in the United States (i.e., DFAS).
3. Display **PowerPoint Slide 5-7: Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters**.
4. Refer participants to Module 3 on service of process for procedures dealing with a country's central authority.

What you need to know

1. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is an important method to obtain evidence from military members overseas. The procedures are similar to obtaining service of process overseas, including letters of request directed to a country's "central" authority.
2. Keep in mind that many of the signatory countries to the Convention have added certain reservations (called "Declarations") to their compliance with the Convention.
3. The Convention in its entirety is reprinted each year in the international volume of Martindale-Hubbell Legal Directory, along with each signatory country's Declarations.
4. Much of the material on the Hague Conventions may not be relevant to caseworkers in their day-to-day activities. Senior staff and attorneys are a more likely audience for in-depth discussions of the Conventions on evidence. Evaluate the needs of the participants and tailor your discussion accordingly.

5.4 EVIDENCE FROM OVERSEAS LOCATIONS

Obtaining evidence from the military on members located in overseas locations is a more difficult task. Module 3 on service of process provides a more thorough discussion of the methods and procedures available to accomplish various tasks associated with child support and paternity actions. Absent cooperation from the military member, service on the overseas member of a court or administrative order is required.

Evidence From Overseas Locations

- Information on Members Overseas is Usually in the United States
- Physical Evidence Overseas is More Difficult

The previous sections of this module are applicable to obtaining information from members stationed overseas. Remember that income and financial information for an overseas military member is obtained through the same means as for a member stationed stateside. DFAS is the processing center for all members, regardless of location. Also, commanders' obligations under regulations are unchanged due to the location of the member.

5.4.1 Obtaining Evidence through the Hague Evidence Convention

One important difference for cases involving military members in overseas locations is application of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. Forty-seven countries are currently signatories to the convention, including most countries in which military members are stationed.

Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters



TRAINING NOTES

What you need to say/do

What you need to know

1. For a more legal discussion of international remedies for obtaining evidence abroad, child support attorneys may want to read “International Support Remedies” by Philip Schwartz, in *Interstate Child Support Remedies* (U.S. Department of Health & Human Services, Office of Child Support Enforcement 1989).
2. U.S. courts have inherent authority to issue letters rogatory requesting foreign judicial assistance.

The purpose of The Hague Evidence Convention is to codify the taking of depositions before consuls and appointed commissioners, in an effort to reconcile different, often conflicting, discovery procedures in civil and common law countries. The Hague Evidence Convention also streamlines procedures for obtaining evidence. It directs the creation of central authorities in each country to receive and handle requests for evidence and determines when translations are necessary. The Convention only applies to civil matters so it cannot be used in a criminal nonsupport action.

The Convention provides three ways of obtaining evidence from abroad. Two focus on the voluntary taking of depositions and involve the U.S. diplomatic or consular offices in the country. The other method uses a Letter of Request sent by a U.S. court to the foreign Central Authority. In the case of military members stationed abroad, the Convention would make a request from a U.S. court to the appropriate judicial authority in the country in which the military member is stationed. The form letter of request does not involve diplomatic channels.

A letter of request is the best method for getting evidence from a noncooperative military member, where compliance is likely only if a foreign court gets involved.

To use a letter of request, follow these steps:

1. A IV-D attorney should prepare a brief motion to his or her local court requesting that the court issue a Letter of Request. Attached to the motion should be the Letter of Request containing the questions you want the military member to answer or a list of the documents you want the member to produce.
2. There is no required form for the Letter of Request, although the Convention details what information the Letter must include. It is recommended that attorneys use the model Letter of Request that is found after the text of the Convention.
3. The attorney should not attach any documents in support of the motion. All of the relevant information should be in the Letter of Request. No cover letter is required.
4. Only a judicial authority can issue a Letter of Request.

TRAINING NOTES

What you need to say/do

1. For subsection 5.4.2, display **PowerPoint Slide 5-8: Evidence from Overseas Location (cont'd)**.
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What you need to know

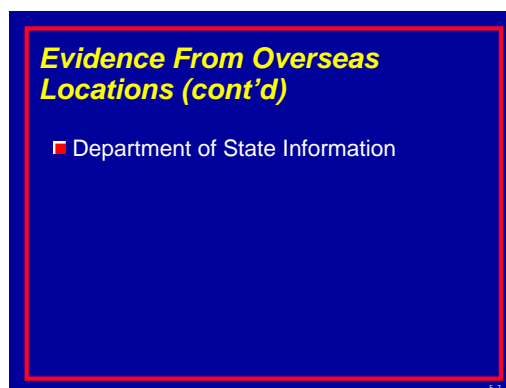
5. If the foreign country where the member is located so requires, you must have translations of the document prepared and certified.
6. The clerk of court (or you) should transmit by international airmail the original Letter of Request and one true copy to the designated central authority for the foreign country. For the addresses of Central Authorities, go to http://travel.state.gov/hague_evidence.html.
7. Although most signatory countries will accept a Letter of Request in either English or French, it is also a good idea to include a translation into the language of the country to which you are sending the Letter.

Upon receipt, the country's Central Authority is required to "expeditiously" send the Letter of Request to the appropriate local court having jurisdiction to force the attendance of the military member and to ask any requested questions. The Letter of Request can ask that answers be given under oath or sworn and that a transcript be taken. However, the foreign court does not have to comply with such requests if the procedure is "incompatible" with the country's own laws or is "impossible" to perform.

Written answers to the questions and/or the requested documents will be sent back to the U.S. court that issued the Letter of Request. The foreign country cannot charge any fees, except for special procedures, experts, and interpreters. If you do not get a response after a few months, you should write to the Central Authority for a status report.

5.4.2 Obtaining Evidence Outside the Hague Evidence Convention

Other than the Hague Evidence Convention, the only way to force an unwilling military member stationed abroad to appear for a deposition or to produce documents is through a Letter Rogatory. A Letter Rogatory is a formal request for judicial assistance from a



TRAINING NOTES

What you need to say/do

1. Tell the participants that when issues concerning obtaining evidence from overseas locations arise, the Department of State website is an extremely valuable source of information. The website is http://www.travel.state.gov/judicial_assistance.html.
2. For subsection 5.5 of this Module, display **PowerPoint Slide 5-9: Exercise Scenarios/Questions**.
3. Refer participants to **Handout 5-1: Review Exercises** in the Appendix. Divide the participants into groups of four or five people. Allow them about 10 minutes to read and discuss the scenarios and solutions among themselves. At the end of 10 minutes, lead an interactive discussion of the scenarios and possible answers.
4. Encourage the participants to ask questions concerning the material presented in the module.

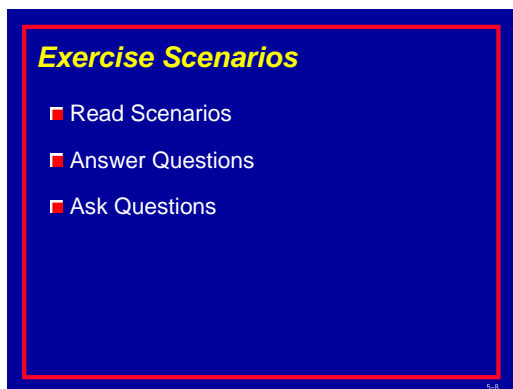
What you need to know

court in one country to a court in another country. Unlike the Letter of Request procedure under the Hague Evidence Convention, you must use diplomatic channels to transmit the Letter Rogatory to the foreign court. Also, the Letter Rogatory requests the foreign court with jurisdiction over the member to use its usual process to require production of the documents or the member's testimony; the U.S. court cannot request special procedures as under the Hague Evidence Convention. Often the foreign court will take testimony without placing the member under oath. The response returned to the U.S. court is usually a summary of the military member's answers rather than a verbatim transcript. Letters Rogatory can be time consuming and cumbersome so they should be an alternative for seeking evidence when other methods have been unsuccessful.

If you intend to use a Letter of Request or Letter Rogatory to seek evidence from a military member stationed overseas, the Department of State is the best source of information. Its website at http://travel.state.gov/obtaining_evidence.html explains how to obtain evidence from overseas. It provides a comprehensive discussion of the procedures and points of contact at the Department of State for assistance.

5.5 EXERCISES

Refer to **Handout 5-1: Review Exercises** in the Appendix. Identify the issues and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the scenarios.



Exercise Scenarios

- Read Scenarios
- Answer Questions
- Ask Questions

5-8

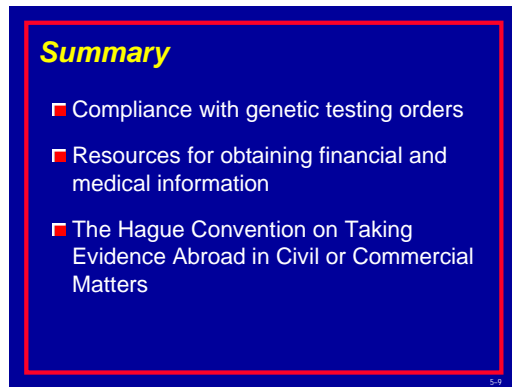
TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-10: Summary**.
 2. Preview the topics that will be discussed in Module 6.
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What you need to know

5.6 SUMMARY OF MODULE 5



In this module we discussed:

- compliance with genetic testing orders
- resources for obtaining financial and medical information
- The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters.

5.7 PREVIEW OF MODULE 6

In the next module, we will discuss the following topics:

- Federal regulations governing paternity and order establishment
- military policies and rules governing the chain of command's involvement in a IV-D paternity and support order establishment case
- establishment of an appropriate child support obligation based on the complete earnings information for an individual in the military
- interpretation of the military's *Leave and Earnings Statement*.

