

SILENT PARTNER

Docs for Division

Introduction: Silent Partner is a lawyer-to-lawyer resource for military legal assistance attorneys and civilian lawyers, published by the military committee of the North Carolina State Bar. Please send any comments, corrections and suggestions to the address at the end of this Silent Partner. There are many Silent Partner infoletters on military pension division, the Survivor Benefit Plan and other aspects of military divorce. Just go to www.nclamp.gov > “For Lawyers” (the website of the military committee, N.C. State Bar).



Introduction

When you’re doing a military divorce case and it comes time to deal with the military retirement benefits, you should know in advance what documents need to be reviewed. This rule applies whether you’re the attorney for the servicemember (SM), the retiree, the spouse, or the former spouse. You need to have a certain number of “docs” in order to understand the process, the current or prospective retired pay of the member or retiree, and what benefits are available (or at risk) for the spouse/former spouse.

Active Duty and Reserve Service

When the individual (“John Doe” in this example) is currently on active duty, you’ll need the Thrift Savings Plan statement (see below) and the Leave and Earnings Statement, or LES. The latter provides information on John’s pay grade, his date of initial entry into service, his current pay, his Social Security number, and other data which will help in preparation of a military pension division order. The specifics shown on the typical LES include:

- 1) NAME: The member’s name in last, first, middle initial format.
- 2) SOC. SEC. NO.: The member’s Social Security Number.
- 3) GRADE: The member’s current pay grade.
- 4) PAY DATE: The date the member entered active duty for pay purposes in YYMMDD format.
This is synonymous with the Pay Entry Base Date (PEBD).
- 5) YRS SVC: In two digits, the actual years of creditable service.
- 6) ETS: The Expiration Term of Service in YYMMDD format. This is synonymous with the Expiration of Active Obligated Service (EAOS).

The LES is issued electronically twice a month to active-duty military personnel. The first LES shows all pay and entitlements for the month. The second LES of the month will not have all required information; if the SM elects to be paid twice a month, the second LES will only show the amount paid

along with the basic information. Practitioners should request more than just one LES to ensure they receive all the information.

Those who are in the Reserve Component (RC), that is, the Reserves and National Guard, will have a Leave and Earnings Statement also. The monthly drill pay and what the monthly pay is for periods of active duty (such as the Annual Training that each RC member serves once a year) would require obtaining his or her LES for those periods of time, usually through discovery.

Retirement from Active Duty

A *regular retirement*, pursuant to Chapter 71 of Title 10, U.S. Code, means that John Doe has already retired from active duty from the armed forces (Army, Navy, Air Force, Marine Corps or Coast Guard). There are several documents which should be available for analysis. They may be obtained either from the retiree or from the federal government:

- 1) “Welcome Letter” packet from DFAS showing expected amount of pay and calculations
- 2) Retiree Account Statements (RAS)
- 3) Retirement orders
- 4) All disability rating decision letters from the Department of Veterans Affairs (VA)
- 5) DD Form 214 (*Record of Separation*, or “discharge papers”). If the SM was on active duty in the National Guard, he or she will have an NGB 22, not a DD Form 214. DD Form 214 is only issued when the individual has been on active duty for at least the preceding six months.
- 6) Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage, DD Form 2656-1
- 7) Data of Payment for Retired Personnel, DD Form 2656
- 8) Forms 1099-R
- 9) Thrift Savings Plan statements

“Welcome Letter” from DFAS. Several months before John Doe retires, he’ll get a letter from the retired pay center that shows him how his retired pay is computed, how many years of creditable service were counted, and what amounts are deducted from his total retired pay (such as taxes and the SBP premium). Don’t expect to find VA waiver information here; John hasn’t gotten that if he has not yet retired.

Retiree Account Statement. This is the retiree’s “pay statement.” It is issued electronically and a new one is generated on a monthly basis. A new RAS is always published when there is any change in regard to one’s retired pay – whether it’s reduced tax withholding, a change in allotments, or an increase in the VA waiver. Every retiree can access the RAS by using the secure website of the retired pay center. For DFAS (Defense Finance and Accounting Service), which handles all of the armed services except the Coast Guard, the “MYPAY” secure website address is <https://mypay.dfas.mil>. Signing up for this secure website is easy. Once John Doe is signed up and is looking at the web page, all that is needed is his

Login ID and password. Then he will be sent a two-factor authentication number to enter on the screen. Once that's done, he can access his account. It takes about a minute to log in, select the form involved, click on "Printer-Friendly Version," and then print it. See **ATCH 1** for an example.

You can find on the RAS the total amount of monthly retired pay, any mandatory deductions from it (e.g., VA waiver, Survivor Benefit Plan premium) to arrive at taxable retired pay, and the taxes which are withheld from retired pay. It will also show the type of SBP election and the birthdate of the beneficiary. The RAS also shows voluntary allotments and any waiver of retired pay that exists due to receipt of disability compensation from the Department of Veterans Affairs. If the individual cannot or will not produce it, then obtain it from the retired pay center using a release signed by the individual (see **ATCH 2** below).

Retirement Orders. This is a document, usually one or two pages long, which specifies the facts regarding retirement. It might state, for example, that Major John Q. Doe, SSN 123-45-6789, was retired from the U.S. Army on May 31, 2022 with an honorable discharge based on completion or the required years of service. Retirements take place on the last day of the month, and the first payment arrives a little over a month later – in this case, on or about July 1, 2022. That's because you have to *survive* for the month in order to be entitled to retired pay for it. This document is helpful in tracking down retroactive payments. If the individual retired on May 31, 2022 and started receiving retired pay a month later, then you will be able to determine how many months (or years) he's been collecting it without sharing any portion with your client, Jane Doe!

VA Disability Rating Decision Letters. Upon retirement, John Doe can use his final military physical exam to apply for VA disability compensation, or he can visit the nearest VA hospital for a physical to start the process. As a result of his physical exam, he may be notified by the Department of Veterans Affairs that he has one or more service-connected disabilities (wounds, illnesses or other medical conditions). The notification is in the form of a letter. The decision letter from the regional VA office tells his disability rating. If it's less than 50%, then there's a dollar-for-dollar reduction in John Doe's retired pay, which means a similar lowering of the share apportioned to Mrs. Doe by the court. This will show up on the RAS as a "VA Waiver," which is entered as a deduction from John Doe's total retired pay before you get to "taxable income." If he's receiving CRSC (Combat-Related Special Compensation), then all VA compensation is deducted from his retired pay, regardless of his disability rating.

DD Form 214. This is the discharge certificate for John Doe. It shows all dates of his service in the military for his entire career up to the date of the execution of the form. It also shows information as to a longevity or disability retirement.

DD Form 2656-1. This form is used for election of coverage under the Survivor Benefit Plan (SBP), and it shows what the SM/retiree has chosen. If the divorce is about to occur or has already been granted, this should reflect former-spouse coverage so as to protect the flow of funds for Jane Doe, the ex-wife, after the death of the SM/retiree. If John Doe dies first, Jane can receive 55% of his retired pay for the rest of her life if she has “former-spouse coverage” and does not remarry before age 55. A former spouse election must be made by John on this form and it must be sent to the retired pay center within one year of the divorce.

DD Form 2656. This form covers the information which the retired pay center, usually DFAS, needs to process continuous payments of retired pay and former spouse payments from the pension. It is also where John elects his SBP beneficiary and designates the “SBP base amount.”

Form 1099-R. This is the retiree’s equivalent of a W-2 form. The retired pay center issues this at the end in January of each year, covering retired pay for the previous year. John can get this from the secure DFAS website. If he’s not signed up, it comes by mail (just like a W-2 form).

Thrift Savings Plan (TSP) statements. This tax-deferred retirement account is similar to a 401(k) plan. Individuals who participate get a “Thrift Savings Plan Participant Statement,” which can either be an Annual Account Summary or a Quarterly Account Summary.

Guard or Reserve Retirement

RC members will have an annual form for retirement points which shows how many they accumulated in each year. In general, this is updated every month, so it’s current as of the previous month’s drill schedule. The form is available through the Internet to every RC member by means of the appropriate secure personnel portal; for example, a member of the Air Force Reserve or the Air National Guard would log on to the secure portal at Air Reserve Personnel Center (ARPC), Buckley Space Force Base, Colorado, and obtain there a copy of his or her most recent Point Credit Accounting and Reporting System (PCARS) statement. The points statement usually shows periods spent on active duty (both annual training and tours of active-duty service). Note that this is a file in the RC member’s personnel folder; it is not a *public record*. With a copy of the points statement in hand, you can also get valuable information on what rank the RC member is and when he or she entered military service.

Be careful in using the verb “retire” when referring to RC personnel, since it can have two meanings. One meaning is when John begins to receive retired pay. This is “pay status” for him; it’s usually at age 60. Another meaning is the point in time when John stops drilling and applies for retirement. Once this occurs, he’s in what is called the “gray area,” since the ID cards for these former RC personnel used to be gray.

A retirement from the Reserve Component is called a *non-regular retirement*. The applicable statutes are found at Chapter 1223 of Title 10, U.S. Code.

If John Doe is or was an RC member, then you have a different list to cover. You can get the forms from John Doe through discovery. You may also be able to obtain them from the appropriate federal or (in the case of National Guard members) state government office. Here are the documents which should be available:

- 1) Retirement points statement(s)
- 2) Notice of Eligibility (NOE or “20-Year Letter”), sent upon attainment of 20 creditable years of Guard or Reserve service
- 3) Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate, DD Form 2656-5
- 4) Application for retirement
- 5) Retirement orders
- 6) All disability rating decision letters from the Department of Veterans Affairs (VA)
- 7) Thrift Savings Plan statements

Retirement points statement - As an example, assume that John Doe is in the Army National Guard or the Army Reserve. The rules for awarding and crediting of retirement points for him are found in AR [Army Regulation] 140-185. Similar rules, instructions or regulations apply to the other branches of service. Additionally, Department of Defense Instructions 1215.7 and 1215.9, as well as Department of Defense Financial Management Regulation Volume 7A, Chapter 1, and AR 140-1 provide retirement point regulatory guidance for the military services. DA Form 5016 is the Chronological Statement of Retirement Points.

NOE (Notice of Eligibility) – The “20-Year Letter,” as this form letter is commonly called by those in the Guard or Reserve, signifies the milestone of 20 creditable years of service. In addition, it requests a decision on what a married SM will do regarding a survivor annuity, known as the Survivor Benefit Plan (see below).

DD Form 2656-5 – This form is where John Doe makes the decision on his survivor annuity. There are three options for Survivor Benefit Plan coverage for married RC members: Option A - John can choose *deferred decision* (meaning he wants to wait until he attains pay status to decide); Option B - John can select *deferred coverage* (payments to Jane would start at “pay status,” usually age 60); or Option C - John can select *immediate coverage*. The first two options require Jane Doe’s written consent.

Application for Retirement – This is John’s request to stop drilling and be transferred to the Retired Reserve. It means that he will no longer be accumulating points toward retirement. Unless John decides

to take a discharge (which is infrequent), which would mean that he's not subject to recall and his pay grade and years of service are frozen, he'll be paid – upon attainment of pay status – according to his pay grade and the military pay tables *at that time*, not at the time he applies for retirement.

Retirement Orders – See above under “Retirement from Active Duty.”

Disability Rating Decision Letters – See above.

Thrift Savings Plan (TSP) statements – See above.

(Note: If John is already in pay status, then you would want to obtain the RAS and Form 1099-R, as with an active-duty retiree).

Military Disability Retirement

The information for active-duty retirement above applies as well to the individual who is given a disability retirement. This means that the military has found him or her to be physically or mentally unfit for future service. With a disability rating of 30% or above, or service of at least 20 creditable years, the individual will be given a disability retirement and paid military disability retired pay (MDRP). You'll need:

TDRL Orders – These orders place John Doe on the Temporary Disability Retirement List (TDRL) for further examination and evaluation, to determine whether he should be retired or returned to active duty.

PEB Report – This report from the Physical Evaluation Board determines that John Doe cannot be returned to active duty and should be given military disability retirement.

PDRL Orders – The orders placing John on the Permanent Disability Retired List are PDRL orders.

MDRP is non-taxable if it's based on combat-related reasons. An explanation of the disability retired pay of MDRP can be found in the Silent Partner, “Q & A – Military Disability Retired-Pay” at www.nclamp.gov > *For Lawyers*.

Concluding Comments

Forget your umbrella? Don't let the “paper tiger” rain on your parade! All these documents can be your next “Excedrin headache.” If you don't do this type of case often, you should definitely associate co-counsel or a consultant. The “sidekick” you hire might be a Guard or Reserve judge advocate. Sometimes you'll want to reach out to a military retiree who used to be a JAG officer. Wherever you go, remember that the duty to obtain competent co-counsel is an ethical requirement. A consultant for your next military case will:

- Know the statutes (the Uniformed Services Former Spouses' Protection Act, or USFSPA, found at 10 U.S.C. 1408; the Survivor Benefit Plan, found at 10 U.S.C. 1447-1455; military disability

retirement, found at Chapter 61 of Title 10; and the numerous other military retirement sections in the U.S. Code);

- Understand the Defense Department rules (ordinarily this is the DODFMR, or Department of Defense Financial Management Regulation); the Coast Guard usually follows these rules;
- Know the law in other states (some states have NO cases or statutes on such issues as who pays for SBP, what the SBP benefit level is, and the division of accrued leave; knowing what other states are doing in these areas can provide useful guidance for your trial judge);
- Have a file folder full of examples (samples of such documents as the Leave and Earnings Statement, the Retiree Account Statement or the TSP Quarterly Statement, so you can provide these to the other side when the opposing party professes ignorance about what document you're talking about); and
- Know the ropes (have contact points within DFAS and other federal agencies who can answer questions).

(rev. 8/1/23)

The Silent Partner series of info-letters is prepared by Mark E. Sullivan (COL, USA – Ret.), a family law attorney in Raleigh, N.C. For comments or suggested changes, contact him at mark.sullivan@ncfamilylaw.com; or 919-832-8507.

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RETIREE ACCOUNT STATEMENT

STATEMENT EFFECTIVE DATE Apr 20, 2023	NEW PAY DUE AS OF MAY 01, 2023	SSN ***-**-1234
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES		DFAS-CL POINTS OF CONTACT
CMS JOHN DOE USAF RET 1234 GREEN RD APEX NC 72947-1234		Defense Finance and Accounting Service US Military Retirement Pay 8899 E 56th Street Indianapolis, IN 46249-1200 COMMERCIAL 317-212-0551 TOLL FREE 1-800-321-1080 TOLL FREE FAX 1-800-469-6559 myPay https://myPay.dfas.mil

PAY ITEM DESCRIPTION					
ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	.00	3,689.00	FITW	.00	264.55
VA WAIVER	.00	699.36	GARNISHMENT DED	.00	423.00
SBP COSTS	.00	32.08	FORMER SPOUSE DED	.00	411.07
TAXABLE INCOME	.00	2,546.49			
			NET PAY	.00	1,858.94

PAYMENT ADDRESS	YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)
DIRECT DEPOSIT	TAXABLE INCOME: 48,890.56 FEDERAL INCOME TAX WITHHELD: 4,538.91

TAXES	
FEDERAL WITHHOLDING STATUS:	SINGLE
TOTAL EXEMPTIONS:	01
FEDERAL INCOME TAX WITHHELD:	264.55

SURVIVOR BENEFIT PLAN (SBP) COVERAGE			
SBP COVERAGE TYPE:	CHILD(REN) ONLY	ANNUITY BASE AMOUNT:	3,689.00
CHILD COST:	18.08		
RCSBP COST:	14.00		
	CHILD DOB:		APR 02, 2001
THE ANNUITY PAYABLE IS 55% OF YOUR ANNUITY BASE AMOUNT WHICH IS 2,028.95 YOU HAVE PAID 18 MONTHS TOWARD YOUR 360 MONTHS OF PAID UP RC/SBP COVERAGE. ONCE YOU HAVE PAID AT LEAST 360 MONTHS TOWARD YOUR COVERAGE AND TURN AGE 70, YOUR COSTS WILL BE TERMINATED BUT YOUR COVERAGE WILL REMAIN ACTIVE.			

RETIRED SERVICEMAN FAMILY PROTECTION PLAN (RSFPP) COVERAGE

RSFPP COVERAGE	ANNUITY PAYABLE	RSFPP COST
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ALLOTMENTS AND BONDS

ALLOTMENT TYPE	PAYEE	AMOUNT	BOND FACE VALUE	SERIES	DEDUCTION
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TAX LEVY DEDUCTIONS

DATE OF LEVY	MONTHLY AMOUNT	BALANCE
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GARNISHMENT DEDUCTIONS

PAYEE	GARNISHMENT AMOUNT	COMPLETION DATE
OR CS DIVISION	423.00	INDEFINITE

FORMER SPOUSE PROTECTION ACT DEDUCTIONS

PAYEE	AMOUNT
DOE H. JANE	411.07

MISCELLANEOUS DEBTS

DEBT TYPE	MONTHLY DEDUCTION	PRINCIPAL AMOUNT	INTEREST AMOUNT	ACCUMULATED INTEREST	DEBT BALANCE
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ARREARS OF PAY BENEFICIARY INFORMATION

NAME	SHARE	RELATIONSHIP
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WE DO NOT HAVE ANY BENEFICIARY INFORMATION ON FILE ON YOUR COMPUTERIZED PAY ACCOUNT. PLEASE CALL 1-800-321-1080 OR VISIT THE DFAS WEB SITE AT <http://www.dfas.mil> UNDER THE RETIRED AND ANNUITY SECTION OF THE MONEY MATTERS AREA TO OBTAIN A BENEFICIARY FORM.

MESSAGE SECTION

THIS IS YOUR MONTHLY RETIREE ACCOUNT STATEMENT. IT SUMMARIZES THE STATE OF YOUR ACCOUNT AS OF THE DATE SHOWN. PLEASE REVIEW YOUR ADDRESS, BANKING, BENEFICIARY, PAY AND ALLOTMENT INFORMATION REGULARLY. FOR MORE INFORMATION ABOUT RETIRED PAY GO TO <http://www.dfas.mil/dfas/retiredmilitary.htm>

Special Power of Attorney and Release/Authorization Form

DATA REQUIRED BY THE PRIVACY ACT OF 1974 (5 U.S.C. 552A). AUTHORITY: Title 5 U.S.C. 552, Title 5 U.S.C. 552a, Title 5 U.S.C. 551, DoD 5400-7-R, and DoD 5200.1-R. PURPOSE: To obtain and maintain information upon which to base a reply or inquiry. ROUTINE USES: Data may be provided under any of the DoD “Authorities and Guidance” and “Blanket Routine Uses” published at <https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>. . Disclosure: Voluntary; however, if you fail to provide all the requested information, the agency may not be able to fulfill your request in a timely manner.

I hereby make, constitute and appoint [name of attorney or other designee] at [law firm name, if applicable, and address], as my agent in regard to obtaining documents, forms and information from the U.S. government (including but not limited to the Defense Finance and Accounting Service, the Department of Defense, the Department of Homeland Security, the Coast Guard Pay & Personnel Center, and the Department of Veterans Affairs). The documents, forms and information to be accessed and obtain are the following:

[Here describe documents and information requested, and also what action is needed. Since the Privacy Act allows release of an individual’s own records upon his/her written authorization, be sure that the person whose records are involved signs this document. In certain circumstances, the legal representative of the individual may need to sign below, such as the legal guardian or the executor/administrator of the estate.]

I expressly authorize the release of the information and documents, and this is pursuant to the Privacy Act and implementing regulations, including Title 5 U.S.C. 552, Title 5 U.S.C. 552a, Title 5 U.S.C. 551, DoD 5400-7-R, and DoD 5200.1-R, and other applicable regulations.

I give my designated agent full authority to do any acts necessary or incident to the performance and execution of the powers herein granted, as fully as if I myself had done so.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the ____ day of _____, 20__.

_____(SEAL)
[here type name, address, work and home telephone numbers]

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that the above-signed individual personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this ____ day of _____, 20__.

NOTARY PUBLIC

My commission expires:_____