

# SILENT PARTNER

## Family Support, Garnishment and Military Retired Pay

*Introduction: Silent Partner is a lawyer-to-lawyer resource for military legal assistance attorneys and civilian lawyers, published by the Military Committee of the American Bar Association's Family Law Section. 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.abanet.org/family/military](http://www.abanet.org/family/military) (the website of the above committee) or [www.nclamp.gov](http://www.nclamp.gov) (the website of the military committee, N.C. State Bar).*

### Introduction

The Uniformed Services Former Spouses' Protection Act,<sup>1</sup> also known as USFSPA, is not just for allocation and distribution of military retired pay in divorce and property division cases. It also specifically provides for the withholding of family support (child support and alimony) from the pension of a military retiree; after effective service of the support order on the designated agent, the specified amount will be disbursed to the payee (within certain monetary limitations, as will be discussed below) for alimony or child support.<sup>2</sup> Additionally, Congress provided for the garnishment of military retired pay for support in Title 42, U.S. Code, Section 659 (a) and (b).<sup>3</sup>

Most attorneys and judges in alimony and child support and alimony cases would consider the income of each party derived from all sources in determining the amount of support. Retired pay will be one of the sources of income to use in determining support, since it is a regularly recurring payment of taxable moneys. In fact, even tax-free payments from the military (e.g., Combat-Related Special Compensation, or CRSC) are subject to garnishment,<sup>4</sup> and non-taxable income derived from military sources (e.g., disability compensation from the Department of Veterans Affairs, or VA) are usually considered in the setting of spousal support and child support.<sup>5</sup> Garnishment of child support payments from military retired pay may be mandatory under a state's child support guidelines, statutes and rules.<sup>6</sup>

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<sup>1</sup> 10 U.S.C. § 1408.

<sup>2</sup> 10 U.S.C. §1408(d).

<sup>3</sup> The treatment herein deals with the specific topic of garnishment for family support obligations; other types of garnishments (e.g., commercial garnishments, involuntary allotments and garnishment from active-duty pay) involve different rules and are not within the scope of this article.

<sup>4</sup> "CRSC is subject to a Treasury offset to recover a debt owed to the United States as well as to garnishment for child support or alimony." DoD 7000.14-R, Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures – Retired Pay, Vol. 7B, ch. 63, para. 620101.C.3.

<sup>5</sup> See, e.g., *Womack v. Womack*, 307 Ark. 269, 818 S.W.2d 958 (1991); *Murphy v. Murphy*, 302 Ark. 157, 787 S.W.2d 684 (1990); *In re Marriage of Nevil*, 809 P.2d 1122 (Colo. App. 1991); *Mims v. Mims*, 442 So.2d 102 (Ala. Civ. App. 1983); and *Riley v. Riley*, 82 Md. App. 400, 571 A.2d 1261 (1990).

<sup>6</sup> See, e.g., *Horine v. Horine*, 2014 Tenn. App. LEXIS 764 (Tenn. Ct. App. Nov. 24, 2014) (Ruling on the issue of income assignment or wage withholding for a retiree, the appellate court upheld trial court's ruling requiring that the father's child support payments must be withheld from his military pension.)

## Retired Pay Scenarios and Issues

Military retired pay is disbursed once monthly to each retiree of the armed forces (Army, Navy, Air Force, Marine Corps and Coast Guard). It is usually based on at least 20 years of creditable service, with payments starting immediately for those who retire from active duty and have at least twenty active-duty years of service; for those in the National Guard or Reserves, retired pay usually begins at age 60. Payments are made by direct deposit to the financial institution account of the retired individual by the retired pay center.<sup>7</sup> An example of a Retiree Account Statement is shown at ATCH 1 below.

Cases involving military retired pay and support generally fall into two categories. The first category is the situation in which there is no division of military retired pay as property. In this situation, the retiree may never have been married to the support claimant, or the parties were previously married but there was no military pension division because the parties' retirement rights were approximately equal, or because the non-military spouse waived military pension division in order to obtain other assets from the marriage. In any of these scenarios, the *full retired pay* of John Doe, the retiree, would be at stake in setting the amount of support.

In other cases, there may have already been a division of military retired pay. When Mary Doe, the former spouse, is receiving a share of the pension, the court may usually take into account the remainder of John Doe's retired pay as income for him, and it would consider the share of his former spouse as income for her.<sup>8</sup> Since both are considered "income," both would be considered in most states as available funds in setting the amount of support.

### General Rules for Garnishment

The rules for Army, Navy, Air Force and Marine Corps retired pay, including garnishment and income withholding restrictions, are found in the Department of Defense Financial Management Regulation, or DoDFMR.<sup>9</sup> The Defense Finance and Accounting Service, or DFAS, which is responsible for administering retired pay division and garnishment for these four branches of military service, has promulgated rules for withholding money from a retiree's military pension for the payment of alimony and child support. The U.S. Coast Guard, a component of the Department of

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<sup>7</sup> For the Army, Navy, Air Force and Marine Corps, garnishments are handled by Garnishment Operations at DFAS (Defense Finance and Accounting Service) in Cleveland, Ohio. Pension garnishments for the Coast Guard and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration are handled by the Coast Guard Pay and Personnel Center in Topeka, Kansas. Throughout this article, the author uses "DFAS," "retired pay center" or "designated agent" to refer to both of these offices.

<sup>8</sup> See, e.g., *Rucker v. Rucker*, 82 So. 3d 189 (Fla. Dist. Ct. App. 2012) (Court cannot double-count pension in its alimony calculations. Here, the court added parties' retirement incomes to their monthly net incomes, which already included retired pay. But court can include each one's share of military pension when determining income); *Hautala v. Hautala*, 417 N.W.2d 879 (S.D. 1988) (Ex-husband's military pension, once divided with his former spouse, may be considered as a source of income in determining alimony for her); *Marriage of Haynie and Kemp*, 1997 Kan. App. Unpub. LEXIS 601 (Ex-wife appealed the judge's inclusion of her share of former husband's military retired pay into "income" for child support purposes; appellate court affirmed trial court's ruling). See also *Santiago v. Santiago*, 122 So. 3d 1270 (Ala. Civ. App. 2013) (Father filed motion to modify his child support payments because, in part, the mother was now receiving part of his military pension and he believed that he was entitled to a reduction in child support and modification of his share of uncovered medical expenses. The mother filed a counter-motion, asking that the court modify the child support by increasing it, which is what the court did. The appellate court affirmed the ruling, stating that the father had asked for modification, and had asked for the court to take into account the parties' incomes and earnings, and that is just what the trial court did).

<sup>9</sup> DoD 7000.14-R, Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures – Retired Pay, Vol. 7B, ch. 27.

Homeland Security, administers retired pay for the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration (both of which are considered “uniformed services” under 10 U.S.C. § 1072) as well as its own retirees, through its Pay and Personnel Center in Topeka, Kansas. In general, it follows the rules set out by DFAS. This section will explain how the rules are implemented.

The rules for collecting alimony, child support or both from an individual’s military retired pay are found at 42 U.S.C. § 659 and 5 C.F.R. Part 581. The money from which family support may be withheld is termed “remuneration for employment.” This includes military retired pay, and even military disability retired pay.<sup>10</sup>

The support garnishment rules specify that alimony means the periodic payment of money for the support and maintenance of a spouse or former spouse. Depending on state law, it may be called separate maintenance, alimony pendent lite, maintenance or spousal support. “Alimony” also includes attorney fees, interest, and court costs when these items are specifically stated in the court order. It does not include payments or transfers of property made in compliance with a property settlement, equitable distribution of property, or other division of property between the spouse(s) or former spouse(s).<sup>11</sup>

“Child support” means periodic payments for the support of a child or children. Depending on state law, it may include payments for health care, education, recreation, clothing, or other specific needs. It also includes attorney fees, interest, court costs, and other relief which may be awarded by the court in connection with the establishment and enforcement of child support.<sup>12</sup>

Money for support is withheld from “disposable earnings.”<sup>13</sup> This means gross retired pay minus certain deductions. It also means Combat-Related Special Compensation, a disability payment from the Department of Defense, in connection with wounds, illnesses or conditions that were incurred in regard to combat or training for combat.<sup>14</sup> The first deduction is for debts owed to the federal government.<sup>15</sup> There is also a deduction for payments required by law, such as premiums for the Survivor Benefit Plan or waivers of retired pay to qualify for tax-free disability compensation from the VA.<sup>16</sup> The final deduction is for federal and state income tax withholding.<sup>17</sup> The remaining funds are subject to support withholding based on “legal process.”

*Legal process* means court orders, writs, judgments or other similar documents to effectuate a garnishment, so long as the document is issued by a court of competent jurisdiction within any state,

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<sup>10</sup> DoDFMR, Vol. 7B, ch. 27, para. 270102.

<sup>11</sup> DoDFMR, Vol. 7B, ch. 27, para. 270201.

<sup>12</sup> *Id.* at para. 270202.

<sup>13</sup> *Id.* at para. 270203.

<sup>14</sup> CRSC is authorized at 10 U.S.C. 1413a. For a full explanation of CRSC, see Mark E. Sullivan and Charles R. Raphun, *Dividing Military Retired Pay: Disability Payments and the Puzzle of the Parachute Pension*, 24-1 J. AM. ACAD. MATRIMONIAL LAW at 147 (2011).

<sup>15</sup> There is an exception. The rules states that all debts to the United States must be deducted, “except that an indebtedness based on a levy for income tax under 26 U.S.C. 6331 shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy.” DoDFMR, Vol. 7B, Ch. 27, Para. 270203.A.

<sup>16</sup> *Id.* at para. 270203.B.

<sup>17</sup> *Id.* at para. 270203.C. The rule requires that amounts withheld cannot greater than the allowable amount if the individual claimed all dependents to which he or she were entitled. Additional federal withholding will be authorized when the individual presents evidence of a tax obligation which supports this.

territory, or possession of the United States.<sup>18</sup> The order is transmitted to the designated agent for the branch of service involved.<sup>19</sup>

### Starting the Process

When the order or other “legal process document” has been served on the designated agent, that office will review it to be sure that “it is regular on its face, appears to conform to the laws of the jurisdiction from which it was issued, was issued to enforce a member’s legal obligation to provide child support and/or alimony, and contains sufficient information to accurately identify the member.”<sup>20</sup>

A garnishment order is *regular on its face*<sup>21</sup> if there are no glaring errors or obvious inconsistencies. In *United States v. Morton*,<sup>22</sup> the U.S. Supreme Court held that the retired pay center is not required to look behind the order to determine whether the trial court had personal jurisdiction over the defendant-servicemember, that this would provide an insurmountable burden for the limited personnel at the agency, and that subject-matter jurisdiction was the proper scope of the agency inquiry upon receipt of a garnishment order.

An order will not be honored, as an exception to the *regular-on-its-face* rule, if the garnishment notice or order:

1. Is for an impermissible purpose;
2. Does not comply with 5 C.F.R. Part 581;
3. Is barred because the government has been served with an order enjoining or suspending the garnishment order; or
4. Is on appeal by the obligor, and state law requires suspension of the garnishment pending appeal.<sup>23</sup>

When the above requirements are met, the designated agent will send a copy of the order to the retiree, notifying him or her of the garnishment, explaining the effect of the order on his or her pay and advising the retiree that he or she has the burden of raising any available defenses to enforcement, which should be lodged in the appropriate court, not with the designated agent.<sup>24</sup>

Next the designated agent will, within 30 days of service of the order, determine the amount of the retiree’s disposable earnings (see below) and establish deductions from the member’s disposable earnings in an amount sufficient to comply with the order. An answer to the legal process will be filed if one is required.<sup>25</sup> Allotments may be stopped or suspended if the member does not have enough retired pay to comply with the order.<sup>26</sup>

### How Much?

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<sup>18</sup> *Id.* at para. 270204. If the order is entered by a proper court of a foreign nation, there must be an agreement binding the United States to honor such an order. *Id.* at para. 270204.B.

<sup>19</sup> *Id.* at para. 2703. Legal process may be served by regular mail or by fax to: Director, Garnishment Operations DFAS Cleveland P.O. Box 998002, Cleveland OH 44199-8002. Fax: 216-522-6960; toll-free fax 877-622-5930. The Coast Guard administers retired pay garnishments through its Retiree and Annuitant Services office at: U.S. Coast Guard Pay and Personnel Center, ATTN: Commanding Officer (RAS), 444 S.E. Quincy St., Topeka, KS 66683-3591.

<sup>20</sup> DoDFMR, Vol. 7B, ch. 27, at para. 270401.

<sup>21</sup> 42 U.S.C. § 659(f).

<sup>22</sup> *United States v. Morton*, 467 U.S. 822 (1984).

<sup>23</sup> 5 C.F.R. § 581.305(b).

<sup>24</sup> DoDFMR, Vol. 7B, ch. 27, at para. 270402.

<sup>25</sup> *Id.* at para. 270403.

<sup>26</sup> *Id.* at para. 270405.

The limits on garnishment are imposed by the Consumer Credit Protection Act.<sup>27</sup> This statute limits payments to 50% of the retiree’s disposable earnings if the retiree can prove that he or she is providing more than half of the support for family members other than those to whom the garnishment order pertains. Otherwise the maximum is 60%. An additional five percent may be added to the 50 (or 60) percent above if the arrearage is for 12 or more weeks.<sup>28</sup>

When an individual owes support under two or more orders, then current support will be paid before arrears. Child support has priority over legal process to enforce current alimony. When there are multiple child support orders and not enough disposable earnings to pay in full all of the orders, then funds will be apportioned among the obligations in proportion to the amounts of current child support due. Alimony obligations are paid on a first-come, first-served basis.<sup>29</sup>

### Appeals, Priorities

Sometimes the individual involved appeals the order issued for child support or alimony through state courts. When this happens, collection from the member’s retired pay and disbursement to the appropriate payee (e.g., individual, support collection agency, clerk of court) will continue when state law requires continued compliance with the underlying order during an appeal; otherwise the collection will continue but disbursements will be suspended.<sup>30</sup>

If the retired pay center receives both a support garnishment under 42 U.S.C. § 659 and an order for monthly payments from the same member pursuant to USFSPA, the orders would be honored on a “first-come, first-served” basis.<sup>31</sup> The maximum which the retired pay center can disburse for both obligations is 65 percent of the disposable earnings payable to the retiree that is considered to be remuneration for employment.<sup>32</sup> If DFAS receives the garnishment decree first, then that would be paid in full, and the balance of the available funds would then be applied to the second obligation. Neither obligation would affect the calculation of disposable pay (since neither obligation is an “authorized deduction” for that purpose). Thus, if the retired pay center is already honoring an alimony garnishment and then receives a military pension division order, dividing retired pay as property, the pension division decree would not affect what the center pays pursuant to the garnishment. The alimony garnishment would have first payment priority.

### Obtaining Retired Military Pay Information

To fully understand how the family support garnishment from retired pay works, it is usually necessary for the attorney to have a working knowledge of military retired pay. The starting point is the document which shows how much an individual is receiving each month from the retired pay center, as well as the deductions and allotments which are subtracted from gross retired pay. That military record is called the Retiree Account Statement, or RAS. DFAS posts this for Army, Navy, Air Force and Marine Corps retirees each month at a secure DFAS website, <https://mypay.dfas.mil>. The Coast Guard

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<sup>27</sup> 15 U.S.C. § 1673.

<sup>28</sup> DoDFMR, Vol. 7B, ch. 27, at para. 270404.

<sup>29</sup> *Id.* at para. 270406.

<sup>30</sup> *Id.* at para. 2705.

<sup>31</sup> 10 U.S.C. § 1408 (e)(4)(A).

<sup>32</sup> “Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act [42 U.S.C. § 659] with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act [42 U.S.C. § 662] to be remuneration for employment that is payable by the United States.” 10 U.S.C. § 1408 (e)(4)(B). See note 13 *supra* as to “disposable earnings” as defined in the DoDFMR.

has its own secure website, managed by the Pay and Personnel Center, Retiree and Annuitant Services Payroll System. It is called Global Pay Self Service. The website for retirees is <http://www.uscg.mil/ppc/ras>. There they can access their own monthly retired pay statement.

If the retiree will not voluntarily produce the RAS, counsel may resort to formal discovery procedures if the matter is in litigation. This could result in production by the retiree, or it could yield a response stating that the retiree doesn't use the Internet, that he's never heard of "myPay" or Global Pay Self Service, or that he doesn't have the documents in question in his possession. With that in mind, some attorneys turn to the federal government for production of documents.

Usually the best way to obtain federal government documents is through a written release from the individual. Neither DFAS nor the Coast Guard requires "magic wording." Avoid document requests which are overly broad or vague. Whenever possible, ask for documents by name (e.g., retired pay is shown on the Retiree Account Statement, the yearly tax summary of retired pay is found on Form 1099-R). Thus counsel might draft a statement for John Doe, the retiree, which would read: "I, John P. Doe, SSN 123-45-6789, hereby authorize the Defense Finance and Accounting Service to release to Marcia L. Williams, attorney at law, at 123 Green Street, Richmond, Virginia 22344 the following documents: a) my December 2015 Retiree Account Statement, b) my 2015 Form 1099-R, and c) my Combat-Related Special Compensation (CRSC) statement for 2015."

When there is a garnishment or income-withholding order for child support or alimony already in place, the non-military party may make use of interrogatories to obtain further information, facts and data concerning the military retiree. The rules for interrogatories are found at 5 C.F.R. Part 581. Appendix A to 5 C.F.R. Part 581 contains instructions on where to send the interrogatories. The questions might be directed to the gross amount of retired pay, the amount (if any) of the premium for Survivor Benefit Plan coverage, the relationship and birthdate of the covered individual,<sup>33</sup> the amount of federal and state tax withholding, and the nature and amount of deductions and allotments, including any "VA waiver."<sup>34</sup> The rules found in 5 C.F.R. Part 581 apply to all federal agencies, not just DFAS and the Coast Guard.

### **Documents from DFAS**

In general, DFAS will usually honor a request for documents so long as it either signed by the individual concerned or else in the form of in a court order or a subpoena signed by a judge; the Coast Guard does not follow DFAS in this regard.<sup>35</sup> With a DFAS case, one should send the request, order or subpoena, with the individual's full name and Social Security Number (SSN), to:

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<sup>33</sup> The name of the beneficiary is not shown on the Retiree Account Statement of a military retiree; only the relationship (e.g., "former spouse") and the birthdate are displayed.

<sup>34</sup> 38 U.S.C. § 5304-5305.

<sup>35</sup> E-mail from Robert Teetsel, Chief of the Legal Services Office, U.S. Coast Guard Pay and Personnel Center to Mark E. Sullivan, author (Dec. 22, 2015, 12:16pm EST), on file with author: "We do regularly receive subpoenas for pay information for both military and civilian employees (obviously tied to divorce situations, but not meeting the 5 CFR Part 581 requirements) and we routinely reply with a form-like letter stating that the Coast Guard is not subject to a state court's subpoena authority (per 6 CFR Part 5, Subpart C, concerning the testimony of Coast Guard employees and the production of records in legal proceedings). We then, however, will usually provide gross pay and other benefit information (such as SGLI coverage) that is otherwise releasable under the FOIA/PA.... When we are able to release information (e.g., member consents or federal subpoena) and we are specifically asked for such, we use a records custodian certification, and I edit it as necessary based on the requesting attorney's needs. The Coast Guard Claims and Litigation Manual, COMDTINST 5890.9, contains additional general information."

Defense Finance and Accounting Service  
DFAS- Cleveland Center  
Records Retrieval (Code HAC)  
1240 East 9<sup>th</sup> Street, Room 2679  
Cleveland, OH 44199-2055  
Fax 216-522-6530

There is no requirement that the subpoena or order be sent by certified mail, although that is strongly recommended. An example of the RAS extract from DFAS is at ATCH 2.

### **Communications with the Coast Guard**

With Coast Guard retirement cases, the agency's response time for an information request is usually faster than at DFAS, often as little as one or two weeks. But the USCG Pay and Personnel Center will not respond in the same manner as DFAS regarding orders and judge-signed subpoenas issued by the divorce court to obtain documents on retired pay issues. According to Robert D. Teetsel, Chief of the Legal Services Office, U.S. Coast Guard Pay and Personnel Center, "The Coast Guard would refuse to honor a state court order; it takes the position that a state court is not considered a 'court of competent jurisdiction' for the release of federal records. This position is expressed in the Coast Guard FOIA/PA Manual, COMDTINST M5260.3, Chapter 13, Section C.11. Records release and testimony is covered by 6 CFR Part 5."<sup>36</sup> Note that the Coast Guard is not a part of the Department of Defense; it is under the Department of Homeland Security and has its own rules and regulations, distinct from those of the Defense Department and the Defense Finance and Accounting Service. Thus, when a "court of competent jurisdiction" (i.e., a federal court) issues an order or subpoena for information or records, that court document would be sent to the Office of General Counsel, U.S. Coast Guard.<sup>37</sup> The address is: Commandant (CG-LGL), U.S. Coast Guard, 2703 Martin Luther King Jr. Ave., Stop 7213, Washington, DC 20593-7213.

"Consent and authorization cases" are treated differently. While generally disclosure of personal or employee information is prohibited under the Privacy Act, subject to twelve exceptions, disclosure is allowed when the individual consents: "No agency shall disclose any record . . . by any means of communication to any person, or to another agency, except pursuant to a written request by or with the prior written consent of the individual to whom the records pertains, unless an exception applies."<sup>38</sup>

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<sup>36</sup> E-mail from Robert Teetsel to the author, December 29, 2015, Subj.: "Getting Financial Information from USCG." Teetsel goes on to state that the Coast Guard is immune from the subpoena power of a state court, and refers the inquiring party to 6 C.F.R. Part 5, Subpart C for additional information about the testimony of Coast Guard employees and the production of records in legal proceedings. He goes on to say that he would then – separate and apart from the subpoena or order - release in my response letter general information about the member that we could release under the FOIA – such as gross pay and the date the member entered military service. I also mention in the letter that 'future military retired pay does not accrue nor is it an annuity or pension. Rather, it is a statutory entitlement computed at the time he retires and it is based on the average of his highest 36 months of basic pay ("high-3") and his total years and months of service at the time of retirement,' tailoring the letter depending on whether the member is active duty, retired, a reservist, etc. I also mention that as a uniformed member of the Coast Guard, the member and authorized dependents receive medical and dental care and are eligible to participate in the Service-members' Group Life Insurance Program (SGLI). Finally, I mention that 'other detailed information is protected by the Privacy Act, 5 U.S.C. 552a (1974) and that, although the Privacy Act prohibits us from releasing specific member allotment and allowance information, general information about allowances, special pay, incentive pay, retirement benefits and other information pertaining to all service members is freely available on the Internet."

<sup>37</sup> 6 C.F.R. Part 5, Subpart C.

<sup>38</sup> 5 U.S.C. § 552a(b).

Cases in which there is consent by the individual involved do not require a court order or subpoena. Such an authorization to release information or documents about pay should be sent to the Pay and Personnel Center (PPC). The contact information is: Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, 444 SE Quincy St., Topeka, KS 66683-3591 (telephone 785-339-3595).

If this is a broader request for information (e.g., the entire service record of an individual), then the request and the member's consent should be sent to the Coast Guard's Personnel Service Command at: Commander, CCG Personnel Service Center PSC, ATTN: PSC-BOPS-C-MR, U.S. Coast Guard Stop 7200, 2703 Martin Luther King Jr. Ave., Washington DC 20593-7200

### **Records and Evidence**

When third-party documents are involved, questions arise about how to get them into evidence. Since they are all hearsay records, some attorneys turn to the public records exception to the hearsay rule, found at Rule 803(8) of the rules of evidence in those states which have adopted the Federal Rules of Evidence.

In other cases counsel may decide that the document is a "business record" and will use a certification regarding the record to obtain admission into evidence. When dealing with the authentication of records and the use of a business-records custodian certification, "One size fits all" is not the rule. There are no standard affidavits which are used by all federal agencies. Usually the applicant's attorney will need to draft the affidavit, which is then reviewed and revised by the legal office in the agency. All agencies need time to respond to document requests. Sometimes several weeks or months are necessary to obtain the requested papers and forms. An example of a Coast Guard pay record certification is found at ATCH 3. A sample business records declaration from the VA is at ATCH 4.

### **Don't Take "NO" for an Answer**

Sometimes the attorney for the retiree will disavow any knowledge of the existence of an RAS, or the retiree will claim that it was lost, misplaced, or "floated away in that big flood last month." As noted above, all Defense Department retirees are eligible for a free "myPay" account at the DFAS website (<https://mypay.dfas.mil>). There is a link to "myPay" on the initial webpage of DFAS, [www.dfas.mil](http://www.dfas.mil) with instructions on how to create an account. Once the account is set up, all John Doe needs to do to obtain his current RAS is to enter his "LogIn ID" and password, go to the screen marked "Your Military Retiree Pay Account," and select "Retiree Account Statement (RAS)." When possible, get the court to order both attorneys and the retiree to use a computer *right there in the courtroom* to access the current or past RAS from the "myPay" website.

### **When in Doubt, ASK!**

Another method of finding out the retiree's deductions is to ask DFAS. A little-known notice in the Federal Register makes this possible for those who are getting payments pursuant to USFSPA. Effective July 13, 2000, DFAS announced at 65 FR 43298 that it would disclose this information to a former spouse:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*



*To former spouses, who receive payments under 10 U.S.C. 1408, for purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.*

While this information may be difficult to obtain if the person at DFAS responding to the written request is a “new hire” who doesn’t know about this rule, diligence and courtesy will get the former spouse through to someone in authority who will be able to assist. Be sure to include in the written request from the former spouse, or FS, full identifying information on the retiree (name and Social Security Number), the same information for the FS and – if appropriate – an authorization for DFAS to provide the information to the attorney for the FS. The request might look like this:

*Defense Finance and Accounting Service  
DFAS- Cleveland Center  
Records Retrieval (Code HAC)  
1240 East 9<sup>th</sup> Street, Room 2679  
Cleveland, OH 44199-2055  
Fax 216-522-6530*

*Pursuant to the Privacy Act Routine Use set out at 65 Fed Register 43298, I hereby request that you provide to me information on the current gross retired pay, current deductions and dollar amount for each deduction used in calculating my share of the pension in regard to my former husband, John Q. Doe, SSN 987-77-6543. My former spouse payments were calculated under 10 USC 1408. [OPTIONAL: I authorize you to provide this information to my attorney, Lucinda Lopez, Lopez and Pasquale, LLP, 123 Green Street, Apex, NC 27566]*

*\_\_\_\_\_/s/\_\_\_\_\_  
Mary P. Doe  
SSN 234-56-7899*

The response time may be several weeks or longer. To check on the status of a request, call 216-522-5046 and be sure to have the retiree’s SSN available.

### **Conclusion**

Income-withholding from military retired pay is a useful tool in collecting support and enforcing court orders. While there are limitations on how much may be collected and rules regarding how to obtain information, the garnishment requirements and procedures are clearly set out in the Code of Federal Regulations and, for DFAS cases, in the Department of Defense Financial Management Regulation. There is much useful information regarding income-withholding on the DFAS website, [www.dfas.mil](http://www.dfas.mil). With knowledge of how the rules apply, what the RAS contains, how to obtain it and how to get it into evidence, the support claimant can expect in most cases to obtain a regular flow of support from military retired pay.

\* \* \*

# ATCH 1 – Retiree Account Statement, Page 1 (2<sup>nd</sup> page not shown)

RETIREE ACCOUNT STATEMENT					
STATEMENT EFFECTIVE DATE <b>DEC 16, 2005</b>		NEW PAY DUE AS OF <b>FEB 01, 2006</b>		SSN 123 - 45 - 6789	
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES  Major John Q. Doe, USAF (Ret.) 123 Green St Apex, NC 27511-1234				DFAS-CL POINTS OF CONTACT  DEFENSE FINANCE AND ACCOUNTING SERVICE US MILITARY RETIREMENT PAY PO BOX 7130 LONDON KY 40742-7130 COMMERCIAL (216) 522-5955 TOLL FREE 1-800-321-1080 TOLL FREE FAX 1-800-469-6559 myPAY <a href="https://myPay.dfas.mil">https://myPay.dfas.mil</a> 1-877-363-3677	
PAY ITEM DESCRIPTION					
ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	2,746.00	2,746.00	FITW	191.31	209.05
VA WAIVER	591.30	473.04	ALLOTMENTS/BONDS	40.00	40.00
SBP COSTS	179.28	179.28	NET PAY	1,744.11	1,844.63
TAXABLE INCOME	1,975.42	2,093.68			
PAYMENT ADDRESS			YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)		
DIRECT DEPOSIT			TAXABLE INCOME:		1,975.42
			FEDERAL INCOME TAX WITHHELD:		191.31
TAXES					
FEDERAL WITHHOLDING STATUS:		SINGLE			
TOTAL EXEMPTIONS:		.01			
FEDERAL INCOME TAX WITHHELD:		209.05			
SURVIVOR BENEFIT PLAN (SBP) COVERAGE					
SBP COVERAGE TYPE:	SPOUSE AND CHILD(REN)		ANNUITY BASE AMOUNT:	2750.50	
SPOUSE COST:	176.78		55% ANNUITY AMOUNT:	1,512.77	
CHILD COST:	50		40% ANNUITY AMOUNT:	1,100.20	
			SPOUSE DOB:	12 DEC 1945	
			CHILD DOB:	13 MAR 1996	
THE ANNUITY PAYABLE IS 55% OF YOUR ANNUITY BASE AMOUNT UNTIL YOUR SPOUSE REACHES AGE 62. AT AGE 62, THE ANNUITY MAY BE REDUCED DUE TO SOCIAL SECURITY OFFSET, OR UNDER THE TWO-TIER FORMULA. THAT REDUCTION MAY RESULT IN AN ANNUITY THAT RANGES BETWEEN 40% (\$1100.20) AND 55% (1512.77) OF THE ANNUITY BASE AMOUNT. THE COMBINATION OF THE SBP ANNUITY AND THE SOCIAL SECURITY BENEFITS WILL PROVIDE TOTAL PAYMENTS FROM DFAS AND THE SOCIAL SECURITY ADMINISTRATION OF AT LEAST 55% OF YOUR BASE AMOUNT. THE ACTUAL ANNUITY PAYABLE IS DEPENDENT ON FACTORS IN EFFECT WHEN THE ANNUITY IS ESTABLISHED.					

**ATCH 2 – Retired Pay Extract**



**DEFENSE FINANCE AND ACCOUNTING SERVICE**  
 CLEVELAND CENTER  
 P. O. BOX 7130  
 LONDON, KY 40741-7130

This letter is in response to your request for information from the retired pay account of the member listed below.

MAJ John Q. Doe, USAF (Retired)

Social Security Number 123-45-6789

Payment Year	2006											
Pay Date	1-Jan	1-Feb	1-Mar	1-Apr	1-May	1-June	1-Jul	1-Aug	1-Sep	1-Oct	1-Nov	1-Dec
Gross Pay	\$0.00	\$0.00	\$0.00	\$0.00	\$2,593.00	\$2,593.00	\$2,593.00	\$2,593.00	\$2,593.00	\$2,593.00	\$2,593.00	\$2,593.00
Misc. Credit	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
FCE/DC Ded.												
VA Waiver	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$83.00
Taxable Income	\$0.00	\$0.00	\$0.00	\$0.00	\$2,415.37	\$2,415.37	\$2,415.37	\$2,415.37	\$2,415.37	\$2,415.37	\$2,415.37	\$2,332.37
FITW	\$0.00	\$0.00	\$0.00	\$0.00	\$201.05	\$201.05	\$201.05	\$201.05	\$201.05	\$201.05	\$201.05	\$188.60
Add'l FITW	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SITW	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
W/H Stats	0	0	0	0	0	0	0	0	0	0	0	0
Allot.	\$0.00	\$0.00	\$0.00	\$0.00	\$1,600.00	\$1,600.00	\$600.00	\$1,600.00	\$1,600.00	\$1,600.00	\$1,600.00	\$1,600.00
SBP	\$0.00	\$0.00	\$0.00	\$0.00	\$177.63	\$177.63	\$177.63	\$177.63	\$177.63	\$177.63	\$177.63	\$177.63
RSFPP	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Tax Levy	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Garn.	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Former Spouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Misc. Ded.	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$600.00	\$600.00	\$100.00
Ret'd Pay Deduction	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Net Pay	\$0.00	\$0.00	\$0.00	\$0.00	\$614.32	\$614.32	\$614.32	\$614.32	\$614.32	\$14.32	\$14.32	\$443.77

Sincerely,  
 Retired and Annuity Pay Operations

**ATCH 3 – Coast Guard Records Custodian Certification**

**CERTIFICATION OF RECORDS**

I, \_\_\_\_\_, of the United States Coast Guard (the “Coast Guard”), hereby state and depose as follows:

1. I am employed with the Coast Guard in the position of Pay and Personnel Center Retiree and Annuitant Service Branch Chief, Topeka, Kansas, and I have personal knowledge of the Coast Guard’s record-keeping system.

2. The attached two pages of documents are records taken from the Coast Guard’s files. They are true copies of a one-page table of gross pay completed on December 23, 2002 and a one-page Survivor Benefit Plan audit completed in 2001.

3. These records were created at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.

4. These documents are kept in the course of the Coast Guard’s regularly conducted business.

5. It is the Coast Guard’s regular practice to keep such records.

6. The foregoing facts are known by me to be true. I am competent to testify to such facts, and would so testify if I appeared in court as a witness at the trial of this matter.

7. I declare and certify under penalties of perjury, pursuant to 28 U.S.C. § 1746, that the forgoing declaration is true and correct.

\_\_\_\_\_

Date: \_\_\_\_\_

Printed name.....  
Custodian of Records  
United States Coast Guard

**ATCH 4 – Sample Business Records Declaration**



**DEPARTMENT OF VETERANS AFFAIRS**  
**Regional Office**  
**123 Green Street**  
**Blacksboro, North Carolina**  
**Phone: 919-832-6677**

**BUSINESS RECORDS DECLARATION**  
**Pursuant to 28 U.S.C. § 1746**

**This is a certification of authenticity of domestic business records pursuant to Federal Rules of Evidence 902 (11).**

I, Larry G. West, attest under the penalties of perjury (or criminal punishment for false statement or false attestation) that:

- 1) I am employed by the United States Department of Veterans Affairs (DVA).
- 2) My official title is Paralegal.
- 3) I am a custodian of records for the DVA.
- 4) Each of the records attached hereto is the original record or a true and accurate duplicate of the original record in the custody of the DVA, and I am a custodian of the attached records.
- 5) The records attached to this certificate were made at or near the time of the occurrence of the matters set forth.
- 6) The records attached were made by (or from information transmitted by) a person with knowledge of those matters.
- 7) Such records were kept in the course of a regularly conducted business activity of the DVA.
- 8) Such records were made by the DVA as a regular business practice.

The enclosed records are:

- Letter to Jacob Harris Stein, XXX-XX-5566, dated April 12, 2010, titled "Your Original VA Disability Rating and Reasons for the Rating" and
- Letter to Jacob Harris Stein, XXX-XX-5566, dated June 15, 2012, titled "Your Revised VA Disability Rating and Reasons for the Rating."

Dated: July 13, 2013

**Larry G. West**  
Larry G. West, Paralegal

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary signature

My commission expires: \_\_\_\_\_