

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 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 (the website of the above committee) or www.nclamp.gov (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) or retiree, or you represent the spouse or 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 the pay grade of John, 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 which the LES gives include the following:

- 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 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.

RC personnel (the RC stands for Reserve Component, which means National Guard and Reserve) will have an annual form called RPAS, or Retirement Points Annual Statement, which shows how many retirement points they have accumulated in that year and in previous years. The RPAS should, but does not always, reflect periods spent on active duty, both annual training, and prior active duty service. Practitioners sometimes get confused when SMs have service in both the active and reserve component. SMs can obtain this from their branch of service – it's not a public record. You can also get valuable information on what rank the RC member is, when he or she entered military service, and what the monthly pay is for periods of active duty (such as the Annual Training that each RC member serves once a year) by obtaining his or her most recent LES.

Active-Duty Retirement

If John Doe has already retired from active duty from the armed forces (Army, Navy, Air Force, Marine Corps or Coast Guard), here are the documents which should be available for analysis. They may be obtained either from the retiree or from the federal government:

- 1) Letter from DFAS showing expected amount of pay and calculations
- 2) All Retiree Account Statements (RAS) issued since date of retirement
- 3) Retirement orders
- 4) All disability rating decision letters from the Department of Veterans Affairs (VA)
- 5) DD Form 214, (Member Service Record, issued upon discharge). If SM was on active duty in the National Guard, he or she will have an NGB 22, not a DD Form 214
- 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

Letter from DFAS. Several months before John Doe retires, he'll get a letter from the retired pay center that shows him exactly 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 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, and always 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 service 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. It takes less than 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) or, if he's uncooperative, a court order or subpoena signed by a judge.

Retirement Orders. This is a document, usually one sheet of paper, 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, 2012. Retirements always take place on the last day of the month, and the first payment arrives a little over a month later – in this case, on July 1, 2012. 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 5/31/12 and started receiving retired pay on 7/1/12, then you will be able to determine how many months (or years) he's been collecting it without sharing any portion with your client, Mrs. John 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 for his entire career.

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.

Form 1099-R. This is the retiree’s equivalent of a W-2 form. The retired pay center issues this at the end of 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. On the bottom of the second page on the right side will be found “Form TSP-8” and you can tell if it’s a uniformed services TSP statement (i.e., a military TSP as opposed to a federal civil service TSP statement) by checking on the first page under the account number and individual’s date of birth. You should find “Retirement Coverage: Active Duty.”

Guard or Reserve Retirement

When John Doe has served in the National Guard or the Reserves, then you’re dealing with an “RC retirement.” As mentioned above, RC stands for “Reserve Component,” which means Guard or Reserve service leading to retired pay.

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.

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 can also get 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 Point 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

RPAS statements - These are issued once a year by the Guard/Reserves. They show how many AD (active duty), ADT (active duty for training) and IDT (inactive duty for training) points have been accumulated for the year by John Doe. An explanation on how this works is *way beyond* the scope of this article. Go to <https://www.hrc.army.mil/tagd/retirement%20points%20accounting%20system%20rpas>

For an overview, or visit the Human Resources Command (HRC) of the Army at www.hrc.army.mil, type “AR 140-185” into the search window, then click on “Retirement Points Accounting System.” The explanation is applicable for all Guard/Reserve cases. If you want to estimate John Doe’s retired pay based on the number of points he acquired (and other factors), go to the above HRC website and type into the search window “retirement points calculator.”

HRC no longer mails the annual or revised AHRC Form 249-2-E to Reserve soldiers. Soldiers must visit the “My Record Portal” at the secure HRC website to view and print their own personal copy of the annual points statement, AHRC Form 249-2-E. For additional assistance, soldiers may contact the Human Resource Service Center at 1-888-276-9472. HRC does not maintain a record of National Guard Retirement points. National Guard soldiers maintain their own personal copy of NGB 23, and they submit it along with their retired pay packet when applying for retired pay to ensure that the NGB 23 is placed in their records.

If John Doe is in the Army National Guard or the Army Reserve, AR 140-185 governs the awarding and crediting of retirement points for him; 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.

National Guard soldiers have their retirement points recorded in a separate retirement point accounting system. Upon retirement, NG soldier points are not automatically fed into RPAS. NGB Form 23 is used as a record of the NG duty performed by a soldier. Before a former or retired member of the National Guard can start to draw retired pay, he or she must submit a retired pay certification packet

(including a summary of all retirement points earned while in the NG) to the HRC Retired Pay Office. Upon certification of retired pay, HRC forwards the certification to DFAS.

NOE – 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 at that time, not at the time he applies for retirement.

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

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, 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.

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 consider associating 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 rules (the DODFMR, or Department of Defense Financial Management Regulation, and the parallel regulations for Coast Guard, Public Health Service and National Oceanographic and Atmospheric Administration, or NOAA);
- 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 division of accrued leave; knowing what other states are doing in these areas can provide useful guidance for your trial judge);
- Have 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).

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ATCH 1 – Retiree Account Statement (first page)

RETIREE ACCOUNT STATEMENT					
STATEMENT EFFECTIVE DATE DEC 16, 2005		NEW PAY DUE AS OF FEB 01, 2006		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 https://myPay.dfas.mil 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		
<p>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.</p>					

PRIVACY ACT RELEASE 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 “Blanket Routine Uses” published at <http://privacy.defense.gov/notices/>. Disclosure: Voluntary; however, if you fail to provide all the requested information DFAS may not be able to fulfill your request in a timely manner.

I authorize the federal government, and any agency or department thereof, to release the following documents to [ATTY NAME, ADDRESS]:

[list documents here] _____

Date _____

Signature _____ Social Security Number _____

Printed Name _____

Address _____

City _____ State _____ Zip Code _____

Home Telephone _____ Work Telephone _____

Date of Birth _____