Know the Law;
Explain It to the Client

- Three types of military retirement
- USFSPA - 10 USC 1408
- 10/10 overlap = garnishment
- LEGAL EAGLE handouts for clients

"The Bounty after the Mutiny"

3 military retirement systems – KNOW them!

Final Retired Pay
High-3
REDUX

"Pre-Retirement Counseling Guide" –
www.armyg1.army.mil/rso/preretirement.asp

"Which Retired Pay Plan Are You Under?"
– same website as above

“Which System Applies to You?”
http://militarypay.defense.gov/retirement/ad/01_whichsystem.html

3 military retirement systems – KNOW them!

CSB = Career Status Bonus

$30,000
FORGET LONG-ARM STATUTES...
THROW AWAY INTERNATIONAL SHOE

FEDERAL JURISDICTIONAL LIMITS:
10 USC 1408(c)(4)

PENSION JURISDICTION IS LIMITED TO:
1. Domicile
2. Consent
3. Residence not due to military assignment

Residence test: SM resides in State A not due to military orders

Example: Airman Smith assigned to Eglin AFB, FL – but lives in Gulf Shores, AL to be near his parents

DOMICILE

• PHYSICAL PRESENCE (excluding temporary absences)

• INTENT AS SHOWN BY...
  – state income taxes
  – car title, registration
  – driver’s license
  – voting
  – home ownership
  – in-state tuition
  – voting
  – bank accounts

Know the Basics

• Regulations
• Federal jurisdiction – three tests (domicile, consent, residence not due to military assignment), 10 U.S.C. 1408(c)(4)
• Wording of the pension division clause
• Four acceptable division methods
"YOU CAN'T SUE ME HERE - - I'M FROM KANSAS!

**Domicile of servicemembers...**

- Servicemembers Civil Relief Act – protects domicile for voting, tax purposes
- False domicile claims
- Costly to litigate in 2 states!

**Leave-and-Earnings Statement**

> Filing the lawsuit... or
> Responding to it

**Safe havens?**

- Unvested pension is Sep. Prop. in ARK., IND., ALA.
- Rest of states don’t require "vesting"
- Puerto Rico doesn’t divide non-contributory pensions

**What is Spouse's Share?**

- 50% of Pension?
  “Wife shall receive 50% of the military retirement benefits of Husband.”
What is Spouse’s Share?
• 50% of Pension?
• ONLY if married during SM’s entire career…
• Otherwise- 50% of marital share of pension

Wording the pension division clause – the marital fraction
• Majority rule
• Minority rule

Pension division formulas
• Majority of states: 50% X “marital fraction” X final retired pay

Majority Marital Fraction:
(When COL Roberts is still on active duty…)
\[ \frac{Yrs. \ Marital \ Military \ Svc.}{Yrs. \ Total \ Military \ Svc.} = \frac{20}{X} \]

Pension division formulas
• Minority of states: 50% X “marital fraction” X retired pay earned as of divorce date

Minority Marital Fraction:
(When COL Roberts is still on active duty…)
Yrs. Marital Military Svc. till divorce
Yrs. Total Military Svc. till divorce
“All Clauses Considered”

– **SET DOLLAR AMOUNT**
  (favors SM - no COLA),
- or -
– **% OF DISPOSABLE RETIRED PAY**
- or -


“All Clauses Considered”

– **FORMULA CLAUSE** (when SM is not yet ret’d)
- or -
– **HYPOTHETICAL**
  (favors SM - freezes grade/years)

**RULES FOR DIRECT PAY ORDERS**

• **NOT MORE THAN 50% OF DISPOSABLE RETIRED PAY**
• **STARTING NO LATER THAN 90 DAYS AFTER SERVICE ON DFAS**
• **PMTS END AT DEATH OF RETIREE OR SPOUSE, WHICHERSOEVER OCCURS FIRST**
• **PROSPECTIVE ONLY-- NO ARREARS**

**RULES FOR DIRECT PAY ORDERS**

• **SERVE ON DFAS CERTIFIED MAIL [RET. RECEIPT REQUESTED]**
• **DECREE TO BE CERTIFIED WITHIN 90 DAYS OF SERVICE**
• **APPLICATION LETTER SIGNED BY SPOUSE [DD Form 2293, www.dfas.mil]**

**Know the Basics**

– **Wording, logistics**
– **Documents**
  • LES [Leave and Earnings Statement]
  • RAS [Retiree Account Statement]  

**RETIREE ACCOUNT STMT.**

Gross pay, VA waiver, SBP premium, Taxable Income
Know the Basics - Resources

- 6 SILENT PARTNERs re military pension division
  
  www.abanet.org/family/military

- DFAS guide for attorneys as to military pension division, “Dividing Military Retired Pay”

Disability Details

- Waiver of ret’d pay for VA disability $

- VA is tax-free, AND…

V.A. DISABILITY PAY = NOT DIVISIBLE!

(ditto for most of Military Disability Retired Pay)

Post-Divorce VA Elections: How the states are responding

- Go to great lengths to help former spouse
  - Indemnification
  - Damage award
  - Re-open the property division
  - Compensatory alimony

How to protect the non-military spouse from VA waivers

- Indemnification Clause

- DON’T SAY “John will take no action…”

- DO SAY “John will compensate Mary…”

Indemnification Clause

- State facts, assumptions [“John is COL with over 18 years’ service in Army, will receive pension based on longevity after at least 20 years of service.”]
**Indemnification Clause**

- State facts, assumptions ["John is COL with over 18 years’ service in Army, will receive pension based on longevity after at least 20 years of service”]
- State intent [“Mary to get unreduced share of pension based on years of service”]
- State duty of SM/retiree [“John will compensate Mary if there is any reduction in her share of the longevity pension.”]
- Include interest on unpaid amount [“The breaching party will also pay interest at the statutory rate on all unpaid amounts and damages.”]

**Indemnification Clause**

- State facts, assumptions ["John is COL with over 18 years’ service in Army, will receive pension based on longevity after at least 20 years of service”]
- State intent [“Mary to get unreduced share of pension based on years of service”]
- Don’t call it Disposable Retired Pay – that limits her share b/c VA is excluded from DRP
- Indemnify also as to expenses – not just REASONABLE [“Each party will pay for all expenses and damages incurred because of the other’s breach of this agreement.”]

**VA with a Vengeance**

CRDP and CRSC – “The Evil Twins” found at…

[www.abanet.org/family/military > SILENT PARTNER](http://www.abanet.org/family/military)

**CRDP to the Rescue**

- CRDP = Concurrent Retirement & Disability Pay
- Available if ≥50% disability rating
- Return of waived military retired pay
CRDP to the Rescue

- Phased in over 10 yrs [2004-2014]
- 100% disabled = immediately vested
- Front-loading of payments

Pg. 2 of RAS: “Based on information received from the VA, your CRDP amount is $___.

CRSP FORMER SPOUSE PROTECTION ACT DEDUCTIONS

<table>
<thead>
<tr>
<th>PAYEE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>MISCELLANEOUS DEBTS</td>
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<table>
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<th>DEBT TYPE</th>
<th>MONTHLY DEDUCTION</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST AMOUNT</th>
<th>ACCUMULATED INTEREST</th>
<th>DEBT BALANCE</th>
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</thead>
</table>

ARREARS OF PAY BENEFICIARY INFORMATION

YOU HAVE ELECTED ORDER OF PRECEDENCE.. THE FOLLOWING BENEFICIARIES ARE ON RECORD:

<table>
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<tr>
<th>NAME</th>
<th>SHARE</th>
<th>RELATIONSHIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>JANE P. DOE</td>
<td>.00</td>
<td>WIFE</td>
</tr>
</tbody>
</table>

MESSAGE SECTION

BASED ON INFORMATION RECEIVED FROM THE VA. YOUR CROP AMOUNT IS $283.96.

DFAS-CL 7220/148 (Rev 03-01)

CRSC statement is at secure “myPay” website for retirees.

TSP is Retirement, Too

- Thrift Savings Plan = defined contribution plan: www.tsp.gov
- Participation? Check the LES!

Waiver Wording

- “Mary Doe hereby waives and gives up any claim she may have to the military retired pay [and Survivor Benefit Plan] of John Doe.”

DID YOU FORGET SOMETHING?
For those left behind -
- S.B.P. [Survivor Benefit Plan...?]
- or Single Biggest Problem????

SBP – **Single Biggest Problem**?
- SBP = 10 USC 1447 et seq.
- Benefit at death of retiree/SM = 55% of base amount
- Cost (from retired pay) = 6.5% of base amount for “spouse/former spouse coverage”
- Benefits, disadvantages
- Checklist for judges

SBP Defined
- Court can order SBP coverage
- Without it, payments to former spouse end at the retiree's death
- Unitary – cannot divide, share with your NEW spouse!

SBP Defined
- Premiums come “off the top” before DRP (if court-ordered)
- Avoid SGLI as alternative (Ridgway case)

Typical Clause??
“MARY DOE SHALL RECEIVE 46.5% OF ALL THE MILITARY RETIREMENT BENEFITS OF JOHN DOE, INCLUDING EVERYTHING ATTRIBUTABLE TO HIS SERVICE IN THE MILITARY TOWARDS A PENSION, AND EVERY PENSION BENEFIT OF HIS.”

Life & Death
If representing SPOUSE –
- **Life**: SPECIFY SHARE OF PENSION
- **Death**: IF SM DIES AFTER DIVORCE, SBP COVERAGE TO ‘FORMER SPOUSE’
- “MARY SHALL BE THE FORMER SPOUSE BENEFICIARY FOR JOHN’S SBP.”
SBP Strategies

- Shifting the premium to FS…
- SBP not available if FS remarries before 55

“Timing Is Everything”

- The 10 Year Rule for pension division garnishment
- The TWO SBP deadlines for order submission to DFAS
- Medical care for former spouses

Dealing with Deadlines

The "10-Year Rule"

COURT ORDER...

+ 10 YRS OF CREDITABLE SERVICE
+ 10 YRS OF MARRIAGE DURING SVC.
= DIRECT PAYMENT FROM DFAS
**NOT a rule of divisibility!!**

Dealing with Deadlines

SURVIVOR BENEFIT PLAN

- One-year deadline
  - From divorce if SM submits applies
  - From date of SBP order if FS sends the order

Dealing with Deadlines

"20-20-20 COVERAGE"

20 YRS OF MARRIAGE
+ 20 YRS OF CREDITABLE SVC
+ OVERLAP OF 20 YEARS
= MILITARY MEDICAL COVERAGE

Dealing with Deadlines

Other Medical Coverage

- CHCBP – 10 USC 1078a
  - Premium-based
  - Normally 36 months after divorce
  - BUT INDEFINITE if:
    - Pension division OR SBP coverage in order
    - Unremarried if under 55

Dealing with Deadlines
Whooo ya’ gonna call?

“Who ya’ gonna call?”

- ABA FAMILY LAW SECTION’S MILITARY COMMITTEE:
  www.abanet.org/family/military/

- NC STATE BAR LAMP COMMITTEE:
  www.nclamp.gov

“Who ya’ gonna call?”

- DFAS WEBSITE: www.dfas.mil

- ARMY RETIREMENT SERVICES:
  www.armyg1.army.mil/rso/rso.asp

The End