

Military Pension Division: Pitfalls & Problems



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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
www.abanet.org/family/military – OR –
www.nciamp.gov]

"The Bounty after the Mutiny"



3 military retirement systems – KNOW them!

Final Retired Pay
High-3
REDUX



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Final Retired Pay
High-3
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"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

CSB = Career Status Bonus



\$30,000

Know the Basics



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

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



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

DEFENSE FINANCIAL AND ACCOUNTING SERVICE MILITARY LEAVE AND BANKING STATEMENT											
ID	NAME (Last, First, MI)	DOC. ORD. NO.	GRADE	PAY DATE	THE SVC	STZ	BRANCH	ADDITIONAL	PERIOD COVERED		
DEBITMENTS			DEDUCTIONS			ALLOWANCES			SUMMARY		
Type	Amount	Type	Amount	Type	Amount	-Adm. Pay					
Basic Pay	121.24	PERSONAL UNIFORM	88.14	Travel Allowance	848.00						
Basic Allowance for Housing	1184.00	FIELD MAINTENANCE	84.24	Continental Allowance	848.00						
		DEBT PAY	16.00								
		DENTAL	21.33								
TOTAL										6,051.86	625.00
LEAVE										West Virginia	State of Residence for Tax Purposes

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

CONSENT

Safe havens?

- Invested 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...)

$$\frac{\text{Yrs. Marital Military Svc.}}{\text{Yrs. Total Military Svc.}} = \frac{20}{X}$$

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...)

$$\frac{\text{Yrs. Marital Military Svc. till divorce}}{\text{Yrs. Total Military Svc. till divorce}}$$

“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, WHICHEVER 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]

Gross pay,
VA waiver,
SBP premium,
Taxable
Income

RETIREE ACCOUNT STMT.

RETIREE ACCOUNT STATEMENT					
STATEMENT EFFECTIVE DATE DEC 30, 2006	NEW PAY PERIOD AS OF FEB 01, 2007				
DFAS-CL POINTS OF CONTACT	DFAS-CL POINTS OF CONTACT				
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES	DFAS-CL POINTS OF CONTACT				
Major John Q. Doe, USAF (Ret.) 123 Green St. Apex, NC 27511-1234	DEFENSE INSTITUTE AND ACCOUNTING SERVICE LEGISLATIVE RETIREMENT PAY PO BOX 110 GORDONSBY #01627030 GORDONSBY, VA 22632-0001 TOTAL DED. 1,400.00 1,388.00 TOTAL DED. 1,400.00 1,388.00 DEF PAY 1,870.00 1,852.00				
PAY ITEM DESCRIPTION					
ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	2,760.00	2,760.00	FEW	10.31	20.00
VA WAIVER	500.00	475.00	ALLOYMENTS/BONDS	40.00	40.00
SBP COSTS	175.00	175.00	NET PAY	1,704.11	1,684.43
TOTAL INCOME	1,975.00	2,005.00			
PAYMENT ADDRESS		YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)		1/01/02	
DIRECT DEPOSIT	TAXABLE INCOME	FEDERAL INCOME TAX WITHHELD		1,974.02	19.31
TAXES		SURVIVOR BENEFIT PLAN (SBP) COVERAGE			
FEDERAL WITHHELD STATUS	SINGLE	SBP COVERAGE TYPE	SPOUSE AND CHILDREN	ANNUITY BASE AMOUNT	2760.00
TOTAL DEDUCTIONS	20.00	SPOUSE CODE	17L76	5% ANNUITY AMOUNT	1,512.00
FEDERAL INCOME TAX WITHHELD	20.00	CREDIT	50	6% ANNUITY AMOUNT	1,656.00
				SPOUSE CODE	11 DEC 1945
				CHILD CODE	11 MAR 1996
<small>THE ANNUITY PAYABLE IS 5% OF YOUR ANNUITY BASE AMOUNT UNLESS YOU SPOUSE REQUESTS AGE 62, AT AGE 61, THE ANNUITY MAY BE REDUCED FOR SOCIAL SECURITY OFFSET. OR UNDER THE TWO-TIER FORMULA, THAT REDUCTION MAY RESULT IN AN ANNUITY THAT RANGES BETWEEN 4% TO 5% OF THE ANNUITY BASE AMOUNT. THE REDUCTION OF THE ANNUITY PAYABLE AND THE SOCIAL SECURITY ADMINISTRATION OF AT LEAST 5% OF YOUR BASE AMOUNT. THE ACTUAL ANNUITY PAYABLE IS DEPENDENT ON FACTORS IN EFFECT WHEN THE ANNUITY IS ESTABLISHED.</small>					

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"

<http://www.dfas.mil/garnishment/military/AttorneyInstructions-01-04-10.pdf>

Disability Details

- Waiver of ret'd pay for VA disability \$
- VA is tax-free, AND...



news
to me!

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”]**

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**

Indemnification Clause

- **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 duty of SM/retiree [“John will compensate Mary if there is any reduction in her share of the longevity pension.”]
- **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

CRDP to the Rescue

- **CRDP = Concurrent Retirement & Disability Pay**
- **Available if $\geq 50\%$ 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 \$____."

FORMER SPOUSE PROTECTION ACT DEDUCTIONS					
NAME	AMOUNT				
MISCELLANEOUS DEBITS					
DEBIT TYPE	MONTHLY DEDUCTION	PRINCIPAL AMOUNT	INTEREST AMOUNT	ACCUMULATED INTEREST	DEBIT BALANCE
ARREARS OF PAY BENEFICIARY INFORMATION					
YOU HAVE EIGHT THIRTY DAYS OF PRECEDENCE. THE FOLLOWING BENEFICIARIES ARE ON RECORD.					
NAME	DATE P. DED.	SHARE	RELATIONSHIP	DATE	
MESSAGE SECTION					
BASED ON INFORMATION RECEIVED FROM THE VA YOUR CRDP AMOUNT IS \$____.					
DFAS-CL 7220148 (Rev 05-01)					



CRSC Pay Statement		
STATEMENT EFFECTIVE DATE AUG 01, 2008	PAYMENT DATE AUG 01, 2008	SSN 123-45-6789
RETIREE'S NAME AND ADDRESS PLEASE REMEMBER TO NOTIFY DFAS OF YOUR ADDRESS CHANGES! MILITARY: 2008 O. BOX, USAP (RET.) 123 GREEN STREET AUGA, NC 27511-1234 PAYMENT ADDRESS DIRECT DEPOSIT	HOW TO CONTACT US DEFENSE FINANCE AND ACCOUNTING SERVICE US MILITARY RETIRED PAY PO BOX 7130 LONGROCK, NY 48742-7130 COMMERCIAL (716) 522-6398 TOLL-FREE 1-800-672-7599 TOLL-FREE FAX 1-800-469-6599 myPay Hhsa.mayPay.dfas.mil 1-877-365-3657	
PAYMENT INFORMATION CRSC Payment 377.00 CRSC Debt Deduction 723.00 CRSC Garnishment Deduction 0.00 CRSC Net Pay 377.00	ENTITLEMENT INFORMATION Retired Pay Before Deductions 2,246.00 Retired Pay Offset by DVA Compensation 172.00 CRSC Debt Balance 0.00 Branch of Military Service 01000 Garnishment Being Withheld 00	
THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING		
CRSC SPECIAL MONTHLY COMPENSATION CODE 00 UNEMPLOYABLE 00 DVA DISABILITY % 50 COMBAT RELATED DISABILITY % 50 PURPLE HEART % 00 CRSC START DATE 08A 01 2004 SPECIAL MONTHLY COMPENSATION START DATE		
REMARKS This is your monthly CRSC statement. Please refer to myPay frequently asked questions for additional information about CRSC and this statement.		

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."



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 (fm retired pay) = 6.5% of base amt 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



Whooo ya' gonna call?



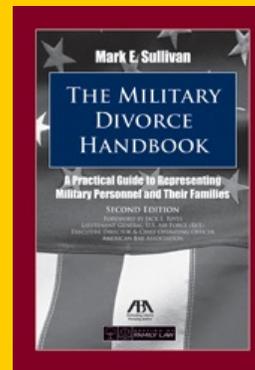
“Who ya’ gonna call?”

- 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



“Who ya’ gonna call?”



The End

