

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.nclamp.gov]

"The Bounty after the Mutiny"



3 military retirement systems – KNOW them!

Final Retired Pay
High-3
REDUX



3 military retirement systems – KNOW them!

Final Retired Pay
High-3
REDUX

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

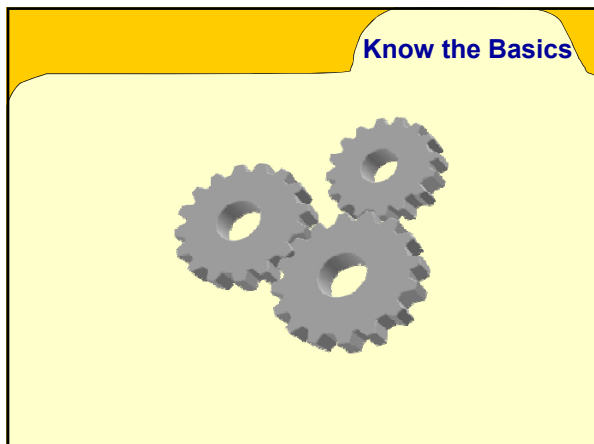
"Which Retired Pay Plan Are You Under?"
– same website as above

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

CSB = Career Status Bonus



\$30,000



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

DEFERRED FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT		LEAVE AND EARNINGS STATEMENT																																																							
ID	NAME (LAST, FIRST, MI)	SOC. SEC. NO.	GRADE	PAY DATE	YTD SVC LEAVE	YTD LEAVE	SEARCH NOTE	ACQUISITION DATE	PERIOD COVERED																																																
<p>EMPLOYMENTS</p> <table border="1"> <thead> <tr> <th>Type</th> <th>Amount</th> <th>Type</th> <th>Amount</th> <th>Ann Pmt</th> <th>Summary</th> </tr> </thead> <tbody> <tr> <td>BASR PAY</td> <td>4,544.00</td> <td>FEDERAL TAXES</td> <td>224.01</td> <td>-TOT BMT</td> <td>4,319.99</td> </tr> <tr> <td>BAF</td> <td>134.00</td> <td>FICA (EMPLOYEE)</td> <td>84.10</td> <td>-TOT DED</td> <td>441.99</td> </tr> <tr> <td>BAF</td> <td>134.00</td> <td>FICA (EMPLOYEE)</td> <td>84.10</td> <td>-TOT BALE</td> <td>441.99</td> </tr> <tr> <td></td> <td></td> <td>MILITARY PAY (BAF)</td> <td>31.35</td> <td>-MIL PAY</td> <td>4,442.27</td> </tr> <tr> <td></td> <td></td> <td>DISBURSE</td> <td></td> <td>-CY Pmt</td> <td>.00</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>-MIL PAY</td> <td>4,442.27</td> </tr> <tr> <td>TOTAL</td> <td>4,812.00</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>										Type	Amount	Type	Amount	Ann Pmt	Summary	BASR PAY	4,544.00	FEDERAL TAXES	224.01	-TOT BMT	4,319.99	BAF	134.00	FICA (EMPLOYEE)	84.10	-TOT DED	441.99	BAF	134.00	FICA (EMPLOYEE)	84.10	-TOT BALE	441.99			MILITARY PAY (BAF)	31.35	-MIL PAY	4,442.27			DISBURSE		-CY Pmt	.00					-MIL PAY	4,442.27	TOTAL	4,812.00				
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<p>WEST VIRGINIA</p> <p>State of Residence for Tax Purposes</p>																																																									

>Filing the lawsuit... or

>Responding to it

CONSENT

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...)

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

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		FORM DFAS (REV. 04/10)	DATE		
12/01/2012-12/31/2012 DEC 16, 2012		FEB 01, 2006 FEB 01, 2006	1121 - 01 - 0700		
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES		DFAS-CL POINTS OF CONTACT			
Major John Q. Doe, USAF (Ret.) 123 GROUND Aptos, NC 27511-1234		DEFENSE FINANCE AND ACCOUNTING SERVICE 15 MILITARY RETIREMENT PAY 200 BAY 118 LONDON KY 40522-7510 COMMERCIAL CLAIMS UNIT TOLL FREE 1-800-521-1000 TOLL FREE FAX 1-800-866-6765 MRPFA MRPFA@dfas.dfas.mil 1-877-862-5877			
PAY ITEM DESCRIPTION					
ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	2,760.00	2,760.00	FTY	191.25	200.00
VA WAIVER	861.30	875.00	ALL COMBON BONDS	40.00	40.00
SBP COST	175.20	179.28	NET PAY	1,744.01	1,846.65
TAXABLE INCOME	1,975.42	2,091.68			
PAYMENT ADDRESS			YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)		
DIRECT DEPOSIT			TAXABLE INCOME:	1,975.42	
			FEDERAL INCOME TAX WITHHELD:	191.11	
TAXES					
FEDERAL WITHHELDING STATUS:			SINGLE		
TOTAL EMPLOYER:			01		
FEDERAL INCOME TAX WITHHELD:			200.00		
SURVIVOR BENEFIT PLAN (SBP) COVERAGE					
SBP COVERAGE TYPE:	SPOUSE AND CHILDREN		ANNUITY BASE AMOUNT:	2760.00	
SBP COST:	175.20		50% ANNUITY AMOUNT:	1380.00	
CHILD COST:	0		40% ANNUITY AMOUNT:	1104.00	
			20% ANNUITY AMOUNT:	552.00	
			10% ANNUITY AMOUNT:	276.00	
THE ANNUITY PAYABLE IS 50% OF YOUR ANNUITY BASE AMOUNT UNDER YOUR SPOUSE REACHER AGE 62. AT AGE 62, THE ANNUITY MAY BE REDUCED DUE TO SOCIAL SECURITY OFFSET OR UNDER THE TWOTIER FORMULA. THAT REDUCTION MAY RESULT IN AN ANNUITY THAT IS LOWER BETWEEN 40% AND 60% OF YOUR 50% (1121.70) 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 75% OF YOUR BASE AMOUNT. THE ACTUAL ANNUITY PAYABLE IS DEPENDENT ON FACTORS IN EFFECT WHEN THE ANNUITY IS ESTABLISHED.					

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 ≥50% disability rating**
- **Return of waived military retired pay**



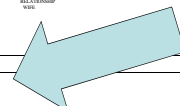
CRDP to the Rescue

- 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					
THE DATA ELECTRONICALLY OR MANUALLY, THE FOLLOWING BENEFICIARIES ARE OR WERE:					
NAME	SSN	ADDRESS	DATE	STATUS	REASON
MESSAGE SECTION					
BASED ON INFORMATION RECEIVED FROM THE VA, YOUR CRDP AMOUNT IS: \$____.					



CRSC Pay Statement		
STATEMENT EFFECTIVE DATE: 09/01/2004	PAYMENT DATE: MAY 01, 2004	SSN: 123-45-6789
RETIREE'S NAME AND ADDRESS		HOW TO CONTACT US
PLEASE REMEMBER TO NOTIFY DFAS OF YOUR ADDRESS CHANGES. DFAS: (800) 411-2000 (DFAP (EXT. 1)) 123 STREET STREET CITY, ST 12345-6789 PAYMENT ADDRESS CREDIT DEPOSIT		DEFENSE FINANCE AND ACCOUNTING SERVICE US MILITARY RETIRED PAY PO BOX 7100 LONDON, KY 40742-7100 COMMERCIAL (502) 625-6288 TOLL-FREE 1-800-472-7098 TOLL-FREE FAX 1-800-480-6559 myPay https://myPay.dfas.mil 1-877-363-3677
PAYMENT INFORMATION		ENTITLEMENT INFORMATION
CRSC Payment: 123.00	CRSC Debt Deduction: 2.00	Retired Pay Before Deductions: 2,100.00
CRSC Garnishment Deduction: 0.00	CRSC Net Pay: 121.00	Retired Pay Offset by DVA Compensation: 75.00
		CRSC Debt Balance: 0.00
		Branch of Military Service: AIR
		CRSC Start Date: 09/01/2004
		Garnishment Being Withheld: 0.00
THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING		
CRSC SPECIAL MONTHLY COMPENSATION CODE	00	UNEMPLOYABLE
DVA DISABILITY %	10	COMBAT RELATED DISABILITY %
PURPLE HEART %	00	CRSC START DATE
CRSC START DATE	09/01/2004	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.		

CRSC statement is at secure "myPay" website for retirees.

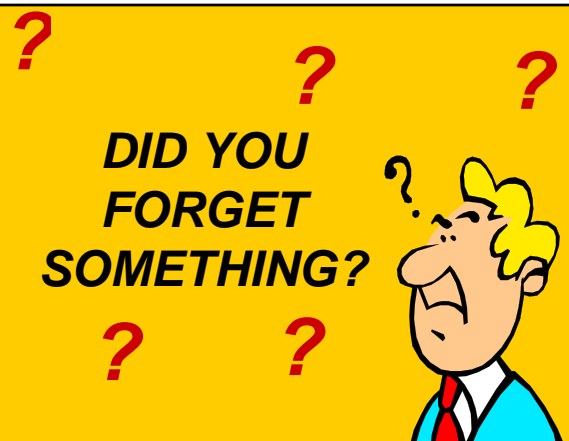
TSP is Retirement, Too

- 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."



For those left behind -

- S.B.P. [Survivor Benefit Plan...?]
- or **S**ingle **B**iggest **P**roblem????



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’

“JOHN WILL IMMEDIATELY ELECT MARY AS SBP FORMER-SPOUSE BENEFICIARY.”

SBP Strategies

- Shifting the premium to FS...
- SBP suspended 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 makes the election
 - From date of SBP order if FS sends "deemed election"



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



Who 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



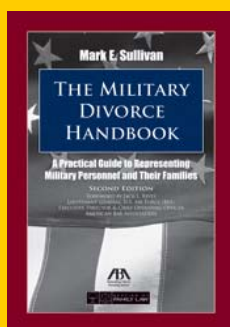
“Who ya’ gonna call?”

- DFAS WEBSITE: www.dfas.mil

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



Whoooo Ya Gonna Call????



“Who ya’ gonna call?”



The End

