

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!



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!

A cartoon illustration of a soldier wearing a green beret and goggles, holding a rifle, standing on a circular base.

Leave-and-Earnings Statement

DEFENSE FINANCIAL AND ACCOUNTING SERVICE MILITARY LEAVE AND SAVINGS STATEMENT																																																																																																																								
ED	NAME (Last, First, MI)	SOC. SEC. NO.	GRADE	PAID DATE	WAGE PCT	STA	BRANCH	ADJUTANT/DIRTY	PERIOD COVERED																																																																																																															
<table border="1"> <thead> <tr> <th colspan="4">DEBIT/DEDUCTIONS</th> <th colspan="4">ALLOWANCES</th> <th colspan="4">SUMMARY</th> </tr> <tr> <th>Type</th> <th>Amount</th> <th>Type</th> <th>Amount</th> <th>Type</th> <th>Amount</th> <th>Code</th> <th>Pay</th> <th>Code</th> <th>Pay</th> <th>Code</th> <th>Pay</th> </tr> </thead> <tbody> <tr> <td>BASE PAY</td> <td>4164.00</td> <td>FEDERAL TAXES</td> <td>284.15</td> <td>DISCRETIONARY PAY</td> <td>549.00</td> <td></td> <td></td> <td>TIME BNF</td> <td>4,488.85</td> <td></td> <td></td> </tr> <tr> <td>BASE PAY</td> <td>1189.00</td> <td>FICA-SSO (OASDI)</td> <td>82.22</td> <td></td> <td></td> <td></td> <td></td> <td>TIME DED</td> <td>481.19</td> <td></td> <td></td> </tr> <tr> <td>BASE PAY</td> <td>1189.00</td> <td>FICA-MDI (MEDICARE)</td> <td>21.22</td> <td></td> <td></td> <td></td> <td></td> <td>TIME ALLI</td> <td>820.00</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>UNEMP. COMP. (FUTA)</td> <td>58.00</td> <td></td> <td></td> <td></td> <td></td> <td>TIME ADG</td> <td>4,488.21</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>UNEMP. COMP. (SUTA)</td> <td>21.22</td> <td></td> <td></td> <td></td> <td></td> <td>TIME PAID</td> <td>0.00</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>CDM Pay</td> <td>4,488.21</td> <td></td> <td></td> </tr> <tr> <td colspan="11">TOTAL</td> <td>4,488.85</td> <td>625.00</td> </tr> </tbody> </table>												DEBIT/DEDUCTIONS				ALLOWANCES				SUMMARY				Type	Amount	Type	Amount	Type	Amount	Code	Pay	Code	Pay	Code	Pay	BASE PAY	4164.00	FEDERAL TAXES	284.15	DISCRETIONARY PAY	549.00			TIME BNF	4,488.85			BASE PAY	1189.00	FICA-SSO (OASDI)	82.22					TIME DED	481.19			BASE PAY	1189.00	FICA-MDI (MEDICARE)	21.22					TIME ALLI	820.00					UNEMP. COMP. (FUTA)	58.00					TIME ADG	4,488.21					UNEMP. COMP. (SUTA)	21.22					TIME PAID	0.00											CDM Pay	4,488.21			TOTAL											4,488.85	625.00
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>Filing the lawsuit... or

>Responding to it

CONSENT

A diagram with two blue curved arrows forming a circle. The top arrow points right and is labeled ">Filing the lawsuit... or". The bottom arrow points left and is labeled ">Responding to it". In the center of the circle, the word "CONSENT" is written in large, bold, blue capital letters.

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		ISS. #
STATEMENT EFFECTIVE DATE: 09/16/2014	NEW PAY PERIOD OF: FEBRU 2014	211 - 01 - 4780
PLEASE REFER TO OTHER DFAS IF YOUR ADDRESS CHANGES		DFAS-CL POINTS OF CONTACT
Major John Q. Doe, USAF (Ret.) 123 Green St. Apex, NC 27511-1234		DEFENSE FINANCE AND ACCOUNTING SERVICE MEMBERARY RETIREMENT PAY PO BOX 7130 COLUMBIA MD 21042-7130 FORMER SER. (191621) 0015 TOTAL SER. (198121) 1980 TOTAL SER. (198121) 1980 TOTAL SER. (198121) 1980 SER. (198121) 1980 SER. (198121) 1980 SER. (198121) 1980
PAY ITEM DESCRIPTION		
ITEM	DATE	NEW
GROSS PAY	2/16/14	2,760.00
VA WAIVER	2/16/14	477.04
DEDUCTIONS	2/16/14	179.24
TAXABLE INCOME	2/16/14	2,007.76
PAYMENT ADDRESS		YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)
DIRECT DEPOSIT		TAXABLE INCOME: 1,911.42 FEDERAL INCOME TAX WITHHELD: 311.31
TAXES		
FEDERAL WITHHELD STATUS: SINGLE		
TOTAL DEDUCTIONS: 179.24		
FEDERAL INCOME TAX WITHHELD: 311.31		
SURVIVOR BENEFIT PLAN (SBP) COVERAGE		
RETIREMENT TYPE: SPouse AND CHILDREN	ANNUITY BASE AMOUNT: 2764.50	
SPOUSE CODE: 17C78	5% ANNUITY AMOUNT: 1,382.25	
CHILD CODE: 91	6% ANNUITY AMOUNT: 1,658.70	
	SPOUSE DOB: 11 DEC 1945	
	CHILD DOB: 13 MAR 1994	
THE ANNUITY PAYABLE IS 5% OF YOUR ANNUITY BASE AMOUNT UNLESS YOUR SPOUSE OR CHILDREN ARE DEPENDENT ON YOU. IF YOU ARE DEPENDENT ON YOUR SPOUSE OR CHILDREN UNDER THE TWO-TIER FORMULA, THAT REDUCTION MAY BESET BY AN ANNUITY THAT RANGES BETWEEN 40% TO 100% AND 50% TO 100% OF THE ANNUITY BASE AMOUNT. THE DEDUCTION OF THE ANNUITY PAYABLE FROM THE SOCIAL SECURITY BENEFIT WILL BE LIMITED TO THE SOCIAL SECURITY BENEFIT AND THE SOCIAL SECURITY ADMINISTRATION OF AT LEAST 50% OF YOUR BASE AMOUNT. THE ACTUAL ANNUITY PAYABLE IS DEPENDENT ON FACTORS IN EFFECT WHEN THE ANNUITY IS ESTABLISHED.		

Know the Basics - Resources

- SILENT PARTNER infoletters 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/AttorneyInstruction-01-04-10.pdf>

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”]**

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**



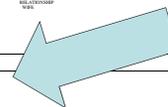
CRDP to the Rescue

- 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	ADDRESS				
MISCELLANEOUS DEBITS					
DEBT TYPE	MONTHLY DEDUCTION	PRINCIPAL AMOUNT	INTEREST AMOUNT	ACCUMULATED INTEREST	DEBT BALANCE
ARREARS OF PAY BENEFICIARY INFORMATION					
YOU HAVE BEEN THE BENEFICIARY OF PROCEEDS. THE FOLLOWING BENEFICIARIES ARE ON RECORD.					
NAME	DATE P. DUE	AMOUNT	REL. ADDRESS	DATE	
MESSAGE SECTION					
BASED ON INFORMATION RECEIVED FROM THE VA, YOUR CRDP AMOUNT IS \$____.					



CRSC Pay Statement	
STATEMENT EFFECTIVE DATE APR 21, 2009	PAYMENT DATE MAY 01, 2009
SSN 123-45-6789	
RETIREE'S NAME AND ADDRESS PLEASE REMEMBER TO NOTIFY DFAS OF YOUR ADDRESS CHANGES MILICE DORE G. DOE, USAP (RET.) 123 GREEN STREET MILICE RT 0711-1234 PAYMENT ADDRESS SDBART DEPOSIT	HOW TO CONTACT US DEFENSE FINANCE AND ACCOUNTING SERVICE US MILITARY RETIRED PAY PO BOX 7136 LONDON, KY 40742-7136 COMMERCIAL (518) 822-8938 TOLL-FREE 1-800-472-7898 TOLL-FREE FAX 1-800-469-8989 myPay Helping Pay (live chat) 1-877-383-3677
PAYMENT INFORMATION CRSC Payment 377.00 CRSC Debt Deduction 0.00 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 192.00 CRSC Debt Balance 0.00 Branch of Military Service POSCS Commitment Being Withheld 0%
THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING	
CRSC SPECIAL MONTHLY COMPENSATION CODE UNEMPLOYABLE 00 DVA DISABILITY % 10 COMBAT RELATED DISABILITY % 10 PURPLE HEART % 00 CRSC START DATE JAB 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 **Single **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, U.S. Supreme Ct. 1981)

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

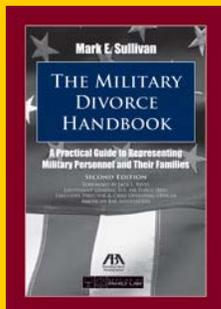


“Who ya’ gonna call?”

- 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

