



Impact of Military & Veteran's Law Issues in Family Law Matters

Military and Veteran's Law Section
Spring CLE 2018
Fredricksburg, Texas



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OVERVIEW



PART 1 - Morning:

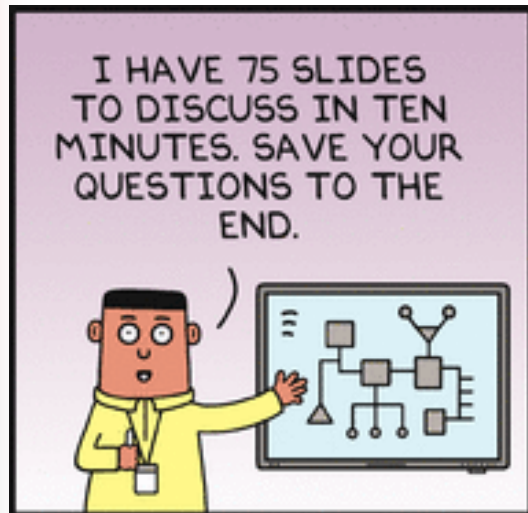
- Jurisdiction and Service of Process
- SCRA: Stays & Defaults
- Discovery: Documents from DFAS & Servicemember
- Calculation of Child Support



PART 2 - Afternoon:

- Division of Military Retirement (30 MIN)
- Post Divorce Matters
 - Clarification
 - Enforcement





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Jurisdiction & Service of Process Over Servicemembers in Family Law Matters

Dawn M. Laubach



Overview:

Jurisdiction & Service of Process

- Subject Matter Jurisdiction
- Personal Jurisdiction
- Texas Law on Jurisdiction
- Service of Process
- Alternate Service
- Process Overseas
- Other Things to Consider
- Useful Websites & Other Information
- Contact Information for All Services



Subject Matter Jurisdiction

- In Rem – power over things
- Court's Authority (matter of law)
- Ties to State
 - Residency
 - Person/Property Located in the State
- Person/Property in State
- Not Waivable
- Subject to *de novo* review

Personal Jurisdiction

- *In personam* -- Power over the individual
- Domicile/residence/minimum contacts
- Serve in the state or long arm statutes
- Waivable
- Soldiers
 - DD Form 2058
 - LES
 - State registered to vote in
 - Driver's license
- Presumption – domicile remains where SM entered service (*Hagle v. Leeder*, 442 S.W.2d 908)





Jurisdiction



- Child Custody – UCCJEA – child's home state
- Child Support – jurisdiction over obligor
- Military Retirement (USFSPA – 10 USC 1408)
 - Active v. Retired
 - Consent or challenge
 - Overseas



Jurisdiction

- TEX FAM Code § 6.301 — Residency Rule
- TEX FAM Code § 6.304 — Armed Forces Personnel
- TEX FAM Code § 6.305 — Nonresident Respondents
- TEX FAM Code § 6.303 — Absence on Public Service
- TEX FAM Code § 6.308 — Partial Jurisdiction



Service of Process

- No Special Rules for Soldiers
- Serving on Post
- Know the Rules: TRCP 21, 21a, 103, 106
- Soldiers in the US/US Territory/US Waters
 - Waiver of Service
 - Personal Service (Sheriff/Private -- TRCP Rule 103/106)
 - Certified Mail (TRCP Rule 103/106)



Service of Process



- TRCP RULE 21 FILING AND SERVING PLEADINGS AND MOTIONS



- TRCP RULE 21a METHODS OF SERVICE



- TCRP 106 METHOD OF SERVICE



- TCRP 103 WHO MAY SERVE



Alternate Service



- TRCP 106(b) Methods of Service
- TRCP 109 Citation by Publication
- TRCP 109a Other Substituted Service
- Service by Email or other methods
- Make a Clear Record
 - Order
 - Make a record and offer evidence



Service of Process Overseas



- TRCP 108a Service of Process in Foreign Countries
- Follow Proper Treaty
- No service by Publication
- No Certified Mail to Countries w/ Treaty
(DeJames v. Magnificence Carriers, Inc.)
- Alternate Methods only Approved by Treaty
- Can be costly



Service of Process Overseas

- Hague Convention (all persons, not just soldiers)
- Must Follow if Country is a Signatory
- Central Authority
- Translation sometimes required
- Status of Forces Agreements
- Does not apply where the address of the person to be served with the document is not known





Service of Process Overseas



- General Requirements
 - Fill out Form USM 94, Request For Service Abroad of Judicial or Extrajudicial Documents
<http://www.usmarshals.gov/forms/usm94.pdf>
 - Mail it, with service documents, to the foreign nation's Central Authority, except for Israel and Great Britain. For Israel and Great Britain, the clerk of court is supposed to mail the documents. Addresses and other information are available in the USCA and from the Department of Justice, Office of Foreign Litigation in Washington, D.C., at (202) 514- 7455 and google!
 - For problems and for information on non-signatory nations, consult the Office of Citizens' Consular Services, (202) 647-3444.





Other Things to Consider



- Voluntary Acceptance/Waiver of Service



- “Baiting” to get an appearance



Other Things to Consider

- Use of Chain of Command
 - Cannot ask them to serve, but can ask them for help (make soldier available)
 - Posse Comitatus Act: Title 18 USC Sec 138
- Call “JAG”
- IG Complaints
- Congressional Inquiries





Useful Websites & Other Information

- http://travel.state.gov/law/info/judicial/judicial_680.html
- <http://www.dcd.uscourts.gov/AttyFMManualANDAttach.pdf>
(attorney manual for service of process on foreign defendants)
- <http://www.legallanguage.com/legal-articles/service-of-process-upon-military-personnel-overseas> (Legal Language Services article on service of process for military personnel overseas and also links to help with translation).
- <http://www.croweforeignservices.com/services.html> -- overseas process server
- <http://www.defense.gov/faq/pis/pc04mltr.html> -- Requests For Military Mailing Addresses



Contact Information for All Services

Army

Office of the Judge Advocate General

Attn: DAJA-LA

2200 Army Pentagon

Washington, D.C. 20310

(703) 588-6708



Navy

Office of the Judge Advocate General

1322 Patterson Avenue, SE STE 3000

Washington Navy Yard, D.C. 20374-5066

(202) 685-4637



Marine Corps

Paralegal Specialist (Ms. Flores)

Headquarters, US Marine Corps (JAR)

2 Navy Annex

Quantico, VA 22134

(703)-784-3681



U.S Air Force

AFLSA/JACA

1420 Air Force Pentagon

Washington, D.C. 20330-1420

(703) 697-0413

Coast Guard

U.S. Coast Guard

G-PC (USCG)

Room 4100E, CGHQ

Department of Transportation

Washington, D.C. 20590

(202) 267-2799





SCRA: STAYS & DEFAULT JUDGMENTS

Dawn M. Laubach

Servicemember's Civil Relief Act

“Protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”

Boone v. Lightner 319 U.S. 561, 575 (1943)

“The Act should be read with an eye friendly to those who dropped their affairs to answer their country's call.”

Le Maistre v. Leffers, 333 U.S. 1, 6 (1948)



Servicemember's Civil Relief Act

Found at 50 USC App. §§501-596

§501 Short title; table of contents

§502 Purpose

The purposes of this Act are— (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

§511 Definitions

§512 Jurisdiction and applicability of Act

§ 517. Waiver of rights pursuant to written agreement

§521 Protection of servicemembers against default judgments

§522 Stay of proceedings when servicemember has notice

§523 Fines and penalties under contracts

§524 Stay or vacation of execution of judgments,





Servicemember's Civil Relief Act

DEFAULT JUDGMENTS




§ 521. Protection of servicemembers against default judgments

- Applies to any civil action or proceeding, including any child custody
- Cases where defendant ***DOES NOT*** make an appearance.



*****So then, Can you default a Servicemember that has made an appearance? (Armstrong Case)***

- 
- If you are going to default **ANYONE** an Affidavit **MUST** be filed!!
Who signs? Attorney? Client? Proof?
Is this a fatal defect?



- Penalties for making or using false affidavits

- Reversal of default Judgment (90 days after release)3



Servicemember's Civil Relief Act

2 PROVISIONS FOR STAY OF PROCEEDINGS

§ 521(d) Stay of proceedings (under protection of servicemembers against default judgments): Counsel or Judge can ask for stay

§ 522. Stay of proceedings when servicemember has notice
Applicable: in military service, within 90 days of discharge, received notice

- *Auto 90 days
- *Can request any stage before final judgment
- *Conditions for Stay (proper letter)
- *Additional stays
- *Appt of Counsel (what is Servicemember retained attorney?)





Discovery from DFAS and Servicemember

James G. Cramp



Overview

Four Scenarios:

- Active Duty SM Retired at Divorce
- Active Duty SM Still Serving at Divorce
- Reserve Component (RC) SM Retired at Divorce
- RC SM Still Serving at Divorce





Overview

Four Scenarios:

- Active Duty SM Retired at Divorce
- Active Duty SM Still Serving at Divorce
- Reserve Component SM Retired at Divorce
- Reserve Component SM Still Serving at Divorce



Active Duty SM Retired At Divorce

Min Info Needed:

- Date of Marriage (judicial admission/pleadings)
 - Years and months of creditable service
- } M/M overlap
- DD214, *Certificate of Release or Discharge from Active Duty*
 - Req. for Production to SM
 - Subpoena to National Personnel Records Center

Director
National Personnel Records Center, (NARA)
(Military Personnel Records)
1 Archives Drive
St. Louis, MO 63138-1002



Active Duty SM Retired At Divorce

Min Info Needed:

- Retiree Account Statement (RAS)
 - Req. for Production to SM (accessible through myPay)
 - Subpoena to DFAS

DFAS- Cleveland

DFAS-ZCF/CL

1240 East Ninth, Street Room 1417

Cleveland, OH 44199



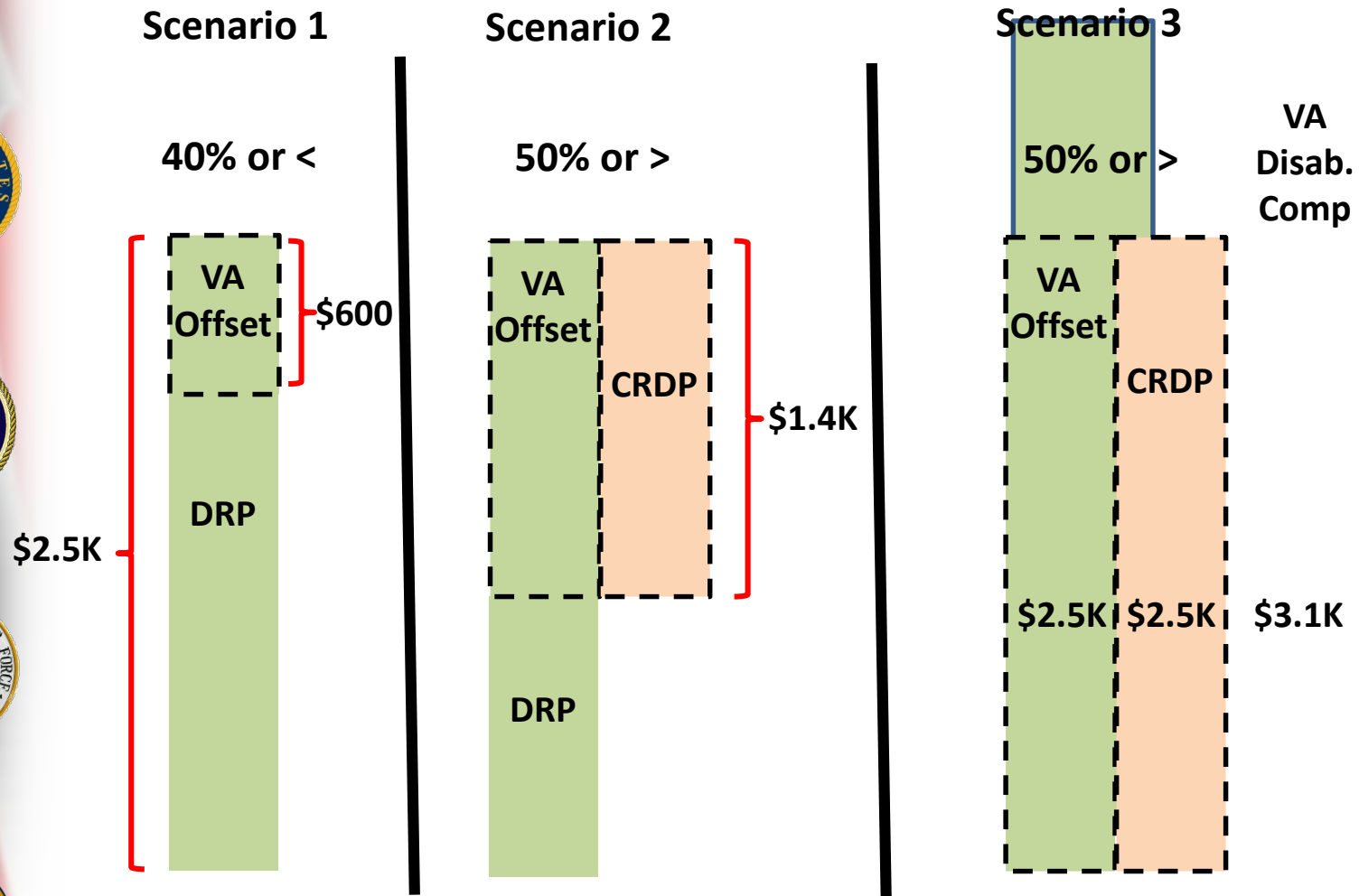
Active Duty SM Retired At Divorce

- RAS shows
 - Disposable Retired Pay to include any VA Offset or Concurrent Retirement and Disability Pay (CRDP)
 - Perhaps Req. for Production of VA Benefits Summary Letter (available on VA eBenefits)
 - Type of SBP election, if any





Why VA Benefits Summary Letter (Scenario 3) ?



SM cannot waive more than Mil. Ret. Pay recv'd



Overview

Four Scenarios:

- Active Duty SM Retired at Divorce
- Active Duty SM Still Serving at Divorce
- Reserve Component (RC) SM Retired at Divorce
- RC SM Still Serving at Divorce





Active Duty SM Still Service At Divorce

Min Info Needed:

- Date of Marriage (judicial admission/pleadings)
- Years and months of creditable service at divorce
 - Req. for Production to SM for Leave & Earnings Statement (LES) (Pay Date)
 - May need date Req. for Production to SM for pers record or statement of service for date used to compute creditable service for retirement (e.g. TAFMSD (AF), BASD (Army), ADSD (Navy), ADBD (Marines))
- High-36 months' base pay at hypo retirement
 - Stipulation – calculated from Rank, DOR, and Pay Date
 - Req. for Production to SM for LESs
 - Subpoena to DFAS as required for LESs

} M/M
overlap





Overview

Four Scenarios:

- Active Duty SM Retired at Divorce
- Active Duty SM Still Serving at Divorce
- Reserve Component (RC) SM Retired at Divorce
- RC SM Still Serving at Divorce



RC SM Retired At Divorce

Min Info Needed:

- Date of Marriage (judicial admission/pleadings)
- Total retirement points at retirement
 - Req. for Production to SM for final points statement
 - As needed, subpoena to Nat'l Personnel Records Center

M/M
overlap

*Figure 29-2. Military Retired Pay Division Order (after December 23, 2016) (Continued)

Award When the Member Has Already Retired From Active or Reserve Duty

"The former spouse is awarded _____ percent (or) \$ _____ (dollar amount) of the member's disposable military retired pay."

Excerpt: Dept of Def. Fin. Mgmt Reg. 7000.14-R, Vol 7B, Chapter 29

National Personnel Records Center



NPRC Veterans Service Officer (VSO)- Official Military Personnel File Contents

Military Personnel Record is called by many names:

- Official Military Personnel File (OMPF)
- Military Personnel Records Jacket (MPRJ)
- 201 File
- Master Personnel Record
- Microfiche or Fiche
- NPRC uses the acronym OMPF for these records.



Official Military Personnel File (OMPF)

The Official Military Personnel File (OMPF) is primarily an administrative record, containing information about the subject's service history such as: date and type of enlistment/appointment; duty stations and assignments; training, qualifications, performance; awards and decorations received; disciplinary actions; insurance; emergency data; administrative remarks; date and type of separation/discharge/ retirement (including [DD Form 214, Report of Separation, or equivalent](#)); and other personnel actions. Detailed information about the [veteran's participation in battles and their military engagements](#) is **NOT** contained in the record.

For most military personnel records since the late 1960s the following information may be part of the record. Not everyone will have all these items (most do not have photographs; few have restricted items, etc.).



National Personnel Records Center



USNMISC

Category	Army	Navy	Air Force	Marine Corps O	Coast Guard
Service Computation	ADMIN CRED	3NDNCCC 1A	ADVLTR	BIR-BTR-RBIR-RBTR	CG-4175
Service Verification /	AF 190	9NDNORSA 1080/14	AETC1431	BONUS-INCNTV-PGM	CG-4714
Computation	AF 7	9NDRORA 5936	AF1185	CERT-NAVAL-SVC	CGHQ-2511B
(Service Computation; Statement	AF 712	AF 1383	AF1226	CERT-PENSION	CGHQ-3433
of Service;	AGO 1393	AF 712	AF1299	CHRON-RECORD	CGHQ-4717
Record / Verification of Military	AGPERSCEN 3	AGOREGON 189	AF1383	COMPUTAT'N-SVC	CGHQ-4973
Service;	AGPZ 1074	ARPC 160	AF1383*	DRILL-CARD	CGL-20YR
Record of Military Processing;	AGPZ 109	CG 718A	AF1383A	EAOS-VERIF-RES	CGPPC-1071
Reserve /	AGPZ 109-1	CG HQ 4147	AF1383A*	ENL-APP	CGPPC-1072
Guard Retirement Points and	AGPZ 213	DA 1383	AF1475	LV-RESTORE-EXCS	CGPPC-1073
Credit Documents)	AGPZ 220	DA-AGO 1381	AF1481	PAY-GRADE	
	AGPZ 61	DA-AGO 1381	AF1613	PRIOR-SVC-APRVL	
	AGPZ 682	DARP 606	AF1613E	REACS-JUMPS/MMS	
	AGPZ 722	DD 108	AF190	REC-OF-SVC	
	AGPZ 760-1	DD 13	AF190*	REQ-INFO	
	AGPZ 801	DD 363N	AF2098	RES-RTMT-CARD	
	AGPZ 930	DGK 2-62	AF2098*	RET-CREDIT-REP'T	
	AGPZ 977	F 143	AF352	RET-RESIG-ORD	
	AGPZ 99	F 185A	AF526	RVW-NAVAL-REC	
	AGUZ 115	F 21.4A	AF526*	STATUS-CHG-XFR	
	AGUZ 589	F 21.5	AF712	STMT-OF-SVC	
	AGUZ 653	F 24	AF712*	TIG-WKSHT	
	AGUZ 807	F 4-15	AFAFC2206		
	APPL RET BE	F 4-24.1	AFHQ02029		
	APPLIND ENL	F 4-4-1	AFHQ0480		
	CERT NGB	F 4A	AFMPC128		
	COMP SVC	GSA 6851	AFMPC156		
	DA 1381	NA 13041	AFMPC215		
	DA 1383	NAR 426FL	AFMPC26		
	DA 1506	NAVCRUIT 1070/3	AFMPC282		
	DA 24	NAVFINCEN 1800/43	AFPC215		
	DA 3283-P	NAVJMC 118	AFPC282		

RC SM Retired At Divorce

Min Info Needed:

- RAS, if receiving retired pay (generally, age 60)
 - Req. for Production to SM (available through myPay)
 - As required, subpoena to DFAS
 - RAS has same uses as previously mentioned
- If not retired, but not yet receiving retired pay (i.e. “gray area”)
 - Req. for Production to SM for DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*
 - Subpoena, as needed – Service addresses on form and/or DFAS





DD FORM 2656-5

RESERVE COMPONENT SURVIVOR BENEFIT PLAN (RCSBP) ELECTION CERTIFICATE

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. Chapter 73, subchapters II and III; DoD Instruction 1332.42, Survivor Annuity Program Administration; DoD Financial Management Regulation, Volume 7B, Chapter 54; and E.O. 9397 (SSN).

PRINCIPAL PURPOSE(S): Used by Reserve Component members, during the 90 day period after receiving notification of eligibility to receive Reserve retired pay, to make an election for the Reserve Component Survivor Benefit Plan (RCSBP).

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide requested information may result in an incorrect election and/or delayed payment of survivor benefits in the event of the member's death.

INSTRUCTIONS

The decision you make regarding participation in the Reserve Component Survivor Benefit Plan (RCSBP) is very important. **A decision to participate, that is to select either Option B or C, is permanent and cannot be changed unless authorized by law**, such as the opportunity to terminate your participation during the period that is between your 62nd birthday and the day before you reach age 63 at which time you may elect to discontinue participation. A decision to decline RCSBP coverage means you will not have another opportunity to select SBP coverage until age 60. In the event you decline RCSBP coverage and die prior to your 60th birthday, no survivor benefits will be paid. Please review the program details carefully and consider the effects of your decision before making an election. You must submit this form within the 90-day period after being notified of eligibility for retired pay at age 60. If you do not submit this form as required, your election, if any, will be determined by law.

Complete this form and submit it to your service using the address listed below. A telephone number is provided if you have questions about the program or need assistance completing this form.

IF YOUR SERVICE IS:	MAIL THIS FORM TO:	FOR QUESTIONS CALL:
ARMY RESERVE/ ARMY NATIONAL GUARD	HRC-Ft. Knox ATTN: AHRC-PDR-RC 1600 Spearhead Division Ave. Ft. Knox, KY 40122	1-888-276-9472 or (502) 613-8950
NAVY RESERVE	Navy Personnel Command (PERS-912) 5720 Integrity Drive Millington, TN 38055-9120	1-877-807-8199 or (901) 874-4304
AIR FORCE RESERVE/ AIR NATIONAL GUARD	HQ ARPC/DPPE 6760 E. Irvington Place Denver, CO 80280-4000	1-800-525-0102 Ask for Entitlements Division
MARINE CORPS RESERVE	Headquarters U.S. Marine Corps Manpower and Reserve Affairs (MMSR-5) 3280 Russell Road Quantico, VA 22134-5103	1-800-336-4649 or (703) 784-9306/9307

SECTION I - MEMBER INFORMATION



Overview

Four Scenarios:

- Active Duty SM Retired at Divorce
- Active Duty SM Still Serving at Divorce
- Reserve Component (RC) SM Retired at Divorce
- RC SM Still Serving at Divorce



RC SM Still Serving At Divorce

Min Info Needed:

- Date of Marriage (judicial admission/pleadings)
 - Total retirement points at divorce
- } M/M overlap
- Req. for Production to SM for current points statement
 - Generally available to servicemember online through Military Service's electronic systems such as:
 - AF's vMPF (virtual Military Personnel Flight),
 - Army Knowledge Online (AKO),
 - Navy's BUPERS Online
 - Marine Online
 - Coast Guard Portal
 - As needed, subpoena SM pers cmd – addresses in paper



RC SM Still Serving At Divorce

Min Info Needed:

- Date of Marriage (judicial admission/pleadings)
 - Total retirement points at divorce
- } M/M overlap
- Req. for Production to SM for current points statement
 - Generally available to servicemember online through Military Service's electronic systems such as:
 - AF's vMPF (virtual Military Personnel Flight),
 - Army Knowledge Online (AKO),
 - Navy's BUPERS Online
 - Marine Online
 - Coast Guard Portal
 - As needed, subpoena SM pers cmd – addresses in paper



RC SM Still Serving At Divorce

Min Info Needed:

- High-36 months' base pay at hypo retirement
 - Stipulation – calculated from Rank, DOR, and Pay Date
 - Req. for Production to SM for LESs
 - Subpoena to DFAS as required for LESs
- If RC SM retirement eligible but still serving
 - DD Form 2656-5 (RCSBP election)
 - Following procedures described earlier
 - Informs on type of RCSBP election





Conclusion

Four Scenarios:

- Active Duty SM Retired at Divorce
- Active Duty SM Still Serving at Divorce
- Reserve Component (RC) SM Retired at Divorce
- RC SM Still Serving at Divorce





CALCULATING CHILD SUPPORT FOR SERVICEMEMBERS

Dawn M. Laubach



NET RESOURCES

TEXAS FAMILY CODE SEC 152.062



(1) **100 percent of all wage and salary income** and other compensation for personal services (including commissions, overtime pay, tips, and **bonuses**);

(2) interest, dividends, and royalty income;



(3) self-employment income;

(4) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and



(5) **all other income** actually being received, including severance pay, **retirement benefits, pensions**, trust income, annuities, capital gains, **social security benefits** other than supplemental security income, **United States Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits**, as defined by 38 U.S.C. Section 101(17), unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.





This Includes

- Base Pay
- BAH
- BAH DIFF
- BAS
- COLA
- VA Disability
- Combat Related Special Compensation
- Military Retirement (regular and medical)
- Reserve Pay
- Civilian Pay
- Employer Contributions to TSP or FERS
- Taxable v. Non Taxable
 - Pay v. Allowances
 - Pre-Tax Deductions



CHILD SUPPORT

SHOW ME THE MONEY!!!!



-Withholding Order

- Military pay, Retired pay, Social security, CRDP
- VA Disability Good luck! - Apportionment



-Military Support Regs – punitive!

- Army – Army Regulations (AR) 608-99, Family Support, Child Custody & Paternity
- Navy – Navy Military Personnel Manual art. 1754-030, para. 4
- Air Force – Secretary of the Air Force Instr. 36-2906, Personal Financial Responsibility, para. 3.1 – 3.3
- Marine Corps – Order P5800, 16a Marine Corps Manual for Legal Administration, Ch. 15, para. 15001
- Coast Guard – U.S. Coast Guard Commandant Instr. M1000.6A, ch. 8M





END OF PART 1

ANY QUESTIONS?



WHAT YOU SHOULD KNOW ABOUT DIVIDING MILITARY RETIRED PAY

Dawn M. Laubach



This will not make you an expert

Dawn M. Laubach



Dividing Military Retirement

- Clear and Concise language . . . Words matter!
 - 50% of Community Share – what is that?
 - military retired pay v. disposable retired pay
 - State Laws v. USFSPA v. Other Federal Laws/Regs



- Clear and Concise Facts
 - rank, years and months of svc, retired pay base (AD)
 - Reserve Points
 - Months of Marriage
 - Months of Creditable Service



- More than just . . . Fixed Amount or Percentage:

“The former spouse is awarded X% [or \$1111.11 of the member’s disposable military retired pay.”



- Current Divorce and drafting original decree or DRO
- Old Divorce and Orders and enforcing or clarifying



Dividing Military Retirement



COURT ORDER MUST PROVIDE:

Hypothetical retired pay base (aka High 3 Year or High 36 month)

Hypothetical years of creditable service

Hypothetical reserve points for reservists

Hypothetical retirement date



ACTIVE DUTY:

"The former spouse is awarded 32% of the disposable military retired pay the member would have received had the member retired as an O-3 with 15 years of creditable service and with a retired pay base of \$3232.00 on the date of divorce."



RESERVISTS:

"The former spouse is awarded 50% of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay as an E-7 with a retired pay base of \$3232.00 and with 2323 reserve retirement points on the date of divorce."





Dividing Military Retirement

Retired Colonel Case:



- BASD May 25, 1987
- Married October 3, 2002
- Divorced December 20, 2002
- Retired October 1, 2015



- At Divorce: O4 with 10 years 3 Months
- At Retirement: O6 with 28 years 4 Months



- Actual: 18.0882% of and O4 with H3BP of \$4742.42
(# months marriage / # months of service at retirement)
- Should have been: 34.1667% of DRP at O4 with H3BP of \$4742.42
(# months marriage / # months of service at divorce)



DETRIMENT TO SPOUSE: \$297.06 a month



Dividing Military Retirement

Retired CSM Case:



- BASD: April 2, 1975; break in service, then re-entered February 1988
- Married July 15, 1977
- Divorced June 9, 1995
- Retired June 30, 2015



- At Divorce: E6 with 11 years
- At Retirement: E9 with 29 years



- Should have been: 32.29% of DRP at E6 with 7 years 3 months & H3BP of \$1701.90
- Actual: 22.71% of DRP of E6 with 20 years of service nad H2B of \$1701.90



DETRIMENT TO Servicemember: \$68.51 month



Dividing Military Retirement

It's more than just a formula



RESERVISTS:

- Need to Know Points and how to read a points statement
- Need to Know High 3 Year Base Pay



MIX OF ACTIVE DUTY AND RESERVE DUTY:

- Must know how to convert points to AD time
- Add converted reserve time to AD



POSSIBILITY OF RESERVE INSTEAD OF ACTIVE DUTY (OR VICE VERSA)

- Language for active duty and reserve formulas
- Clarification or improper post divorce modification





Dividing Military Retirement



NDAAs 2017

- Applicable only to final orders which are prior to the date of a member's retirement
- Disposable income is limited to the amount of basic pay payable to the member for the member's base pay and years of service at the time of the court order
- Increased by the cost-of-living amounts granted to military retirees from the time of the (divorce) to the date the member retires
- DoDFMR Volume 7B, Chapter 29, was updated on June 2017, and contains a section exclusively on NDAAs 2017, Section 641 changes.





Dividing Military Retirement



Drafting Military Clarification Orders

James G. Cramp



Overview

- Establishing Need for Clarification
- Analyzing the Task
 - Trial Court Time Lines
 - DFAS Time Lines
 - Constrains on Drafting the Clarification Order
 - Info Required to Draft the Clarification Order
 - Form of Drafting the Clarification Order





Establishing the Need for Clarification



DEFENSE FINANCE AND ACCOUNTING SERVICE

CLEVELAND
GARNISHMENT OPERATIONS
PO BOX 998002
CLEVELAND, OHIO 44199-8002

Exhibit "A"

(DFAS-HGA/CL)

Mar 23, 2016

SM Name
Last 4 of SSAN

Former Spouse Name
Address

Dear [Former Spouse Name]

We have received your application for payment of a portion of the retired/retainer pay of the above-named member under the Uniformed Services Former Spouses' Protection Act (10 U.S.C. § 1408). Your application cannot be approved for the following reason(s):

The court order you submitted provides for a division of retired/retainer pay by means of a hypothetical amount of retired pay as of the time of divorce. However, the court order does not provide enough information to calculate the amount of the hypothetical retired pay. You must obtain a certified copy of a clarifying order which awards the former spouse a fixed dollar amount or percentage of the member's actual disposable retired pay. For more information please see the DoD Financial Management Regulation, Chapter 29, Volume 7B, Para. 290608 and Appendix A, which may be accessed on our web page at <http://www.dfas.mil/garnishment/usfsa/legal.html>.

Your application package (application, certified court order and supporting documentation) will be retained on file for 90 days. The requested information must be received within 90 days, or the entire application package must be resubmitted with the requested information.

If your divorce decree specifies that you are to be designated as a former spouse beneficiary for the Survivor Benefit Plan (SBP), you must make a 'deemed election' for SBP coverage within one year of the date of your divorce or other court order requiring SBP coverage for you directly to the Retired Pay office; DFAS, US Military Retirement Pay, PO Box 7130, London, KY 40742-7130. The request must be submitted using a DD Form 2656-i. To obtain a copy of the form and other useful SBP information through the internet, visit the DFAS website at: <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2656-10.pdf>. If you have any questions regarding SBP coverage, you may call the Retired Pay office at 1-800-321-1080.

You must include the member's social security number on all correspondence to this office. If you have any questions, you may contact us through the DFAS WEB page at www.dfas.mil/garnishment.html or call the Customer Service Section at 1-888-332-7411 (DFAS411). However, please note that this office must limit its response to inquiries regarding the status of your case and thus we cannot provide legal guidance in pursuing your case. For legal assistance, please contact your attorney or legal representative.

Sincerely,

Paralegal Name & Signature
Block



Establishing the Need for Clarification



The court order you submitted provides for a division of retired/retainer pay by means of a hypothetical amount of retired pay as of the time of divorce. However, the court order does not provide enough information to calculate the amount of the hypothetical retired pay. You must obtain a certified copy of a clarifying order which awards the former spouse a fixed dollar amount or percentage of the member's actual disposable retired pay. For more information please see the DoD Financial Management Regulation, Chapter 29, Volume 7B, Para. 290608 and Appendix A, which may be accessed on our web page at <http://www.dfas.mil/garnishment/usfspa/legal.html>.



Analyzing the Task

1. Trial Court Time Lines





Analyzing the Task

1. Trial Court Time Lines

2. DFAS Time Lines

Your application package (application, certified court order and supporting documentation) will be retained on file for 90 days. The requested information must be received within 90 days, or the entire application package must be resubmitted with the requested information.





Analyzing the Task

1. Trial Court Time Lines

2. DFAS Time Lines

3. Constraints on Drafting the Clarification Order

See, e.g.,

- Tex. Fam. Code § 9.007 (stating a Court “may not amend, modify, alter or change the division of property made or approved in the decree”)
- *Lohse v. Cheatham*, 705 S.W.2d 721, 726 (Tex. App.—San Antonio 1986, writ diss’d w.o.j. (stating that a court only has authority to clarify, not modify, a decree and further stating that **an unambiguous decree that contains errors which produce an unfair result is not subject to clarification**)). (emphasis added)





Analyzing the Task

1. Trial Court Time Lines
2. DFAS Time Lines
3. Constraints on Drafting the Clarification Order
 - Do not expect DFAS to rescue the situation either
 - DFAS will use the information contained in the order even if it varies from the Servicemember's actual information





Analyzing the Task

4.a. Info Required to Draft the Clarification Order

- Flows from analysis of the Decree and DRO (if any)



W-6. All right, title and interest in and to the sum equal to fifty percent (50%) of the disposable retired pay of a Lt. Colonel, with a pay grade of (05), with thirteen (13) years and ten (10) months of creditable service to be paid as a result of **JOHN F. SMITH**'s service in the United States Armed Forces, and that share attributable to the interest awarded to **MARY K. SMITH** of all increases in the United States Armed Force disposable retired pay due to cost of living or other reasons, if, as, and when received by **JOHN F. SMITH**.





Analyzing the Task

4.b. Info Required to Draft the Clarification Order

- Flows from analysis of the Decree and DRO (if any)

W-8. Fifty percent (50%) of the community portion of husband's Air Force Reserve pay, more particularly defined in a Domestic Relations Order.

7. Respondent is awarded one-half of Petitioner's U.S Army retirement that accrued during the marriage as of _____.





Analyzing the Task

4. Info Required to Draft the Clarification Order

- Flows from analysis of the Decree and DRO (if any)
- Common requirements
 - Failure to calculate the community interest and former spouse's interest





Analyzing the Task

4. Info Required to Draft the Clarification Order

- Flows from analysis of the Decree and DRO (if any)
- Common requirements
 - Failure to calculate the community interest and former spouse's interest
 - Failure to identify creditable military service to permit DFAS to calculate the hypothetical retired pay multiplier





Analyzing the Task

4. Info Required to Draft the Clarification Order

- Flows from analysis of the Decree and DRO (if any)
- Common requirements
 - Failure to calculate the community interest and former spouse's interest
 - Failure to identify creditable military service to permit DFAS to calculate the hypothetical retired pay multiplier
 - Failure to calculate the SM's high-36 months' base pay at time of hypothetical retirement





Analyzing the Task

4. Info Required to Draft the Clarification Order

- Flows from analysis of the Decree and DRO (if any)
- Common requirements
 - For Reserve Corps SM, failure to use retirement points earned to calculate the community interest, former spouse's interest and years and months of creditable service that determines the hypothetical retired pay multiplier
 - For Reserve Corps SM, failure to understand that points are divided by 360 to determine years and months of creditable service





Analyzing the Task



Begin Date (yyyymmdd)	End Date (yyyymmdd)	MMSI	IDT	MEM	ACCP Misc Pts	AD Pts	VS	TOTAL Career Points	TOTAL Pts For Ret Pay	CREDITABLE Svc For Ret Pay
1984/10/16	1985/09/17	F3	0	--	0	0	V	---	---	--/--/--
1985/09/18	1985/10/15	A4	0	14	0	28	V	42	42	00/00/28
1985/10/16	1986/10/15	A4	0	0	0	365	V	365	365	01/00/00
1986/10/16	1987/10/15	A4	0	0	0	365	V	365	365	01/00/00
1987/10/16	1988/10/15	A4	0	0	0	366	V	366	366	01/00/00
1988/10/16	1989/10/15	A4	0	0	0	365	V	365	365	01/00/00
1989/10/16	1990/10/15	A4	0	0	0	365	V	365	365	01/00/00
1990/10/16	1991/06/17	A4	0	--	0	245	V	---	---	--/--/--
1991/06/18	1991/10/15	F3	0	5	0	0	V	250	250	01/00/00
1991/10/16	1991/12/25	F3	0	--	0	0	V	---	---	--/--/--
1991/12/26	1992/10/15	B1	33	15	0	15	V	63	63	01/00/00
1992/10/16	1993/10/15	B1	53	15	0	15	V	83	75	01/00/00
1993/10/16	1994/10/15	B1	34	15	0	0	V	49	49	00/00/00
1994/10/16	1995/10/15	B1	40	15	0	15	V	70	70	01/00/00
1995/10/16	1996/10/15	B1	47	15	0	15	V	77	77	01/00/00
1996/10/16	1997/10/15	B1	48	15	0	15	V	78	78	01/00/00
1997/10/16	1998/10/15	B1	43	15	0	15	V	73	73	01/00/00
1998/10/16	1999/10/15	B1	35	15	0	17	V	67	67	01/00/00
1999/10/16	2000/10/15	B1	55	15	90	15	V	165	90	01/00/00
2000/10/16	2001/10/15	B1	55	15	60	15	V	145	105	01/00/00
2001/10/16	2002/07/24	B1	40	--	42	4	V	---	---	--/--/--
2002/07/25	2002/10/15	B2	0	15	0	83	V	184	177	01/00/00
2002/10/16	2003/03/12	B2	0	--	1	148	V	---	---	--/--/--
2003/03/13	2003/10/15	B1	16	15	0	35	V	215	215	01/00/00
2003/10/16	2004/10/15	B1	42	15	0	21	V	78	78	01/00/00
2004/10/16	2005/01/21	B1	12	--	0	5	V	---	---	--/--/--
2005/01/22	2005/10/15	B2	0	15	0	267	V	299	299	01/00/00
2005/10/16	2006/07/09	B2	0	--	0	267	V	---	---	--/--/--
2006/07/10	2006/10/15	B1	4	15	0	0	V	286	286	01/00/00
2006/10/16	2007/10/15	B1	54	15	0	8	V	77	77	01/00/00
2007/10/16	--	B1	38	--	0	0	V	---	---	--/--/--
Grand Totals					3074			4127	3997	21/00/28

Marital Overlap



Analyzing the Task

4. Info Required to Draft the Clarification Order

5. Form for Drafting the Clarification Order

- My preference: Cite relevant parts of BOTH the Decree and DRO (if any)
- “Feed” DFAS its own language





Analyzing the Task

4. Info Required to Draft the Clarification Order

5. Form for Drafting the Clarification Order

- My preference: Cite relevant parts of BOTH the Decree and DRO (if any)
- “Feed” DFAS its own language





Analyzing the Task

4. Info Required to Draft the Clarification Order

5. Form for Drafting the Clarification Order

- My preference: Cite relevant parts of BOTH the Decree and DRO (if any)
- “Feed” DFAS its own language



DoD 7000.14-R

Financial Management Regulation

Volume 7B, Chapter 29

* June 2017

Figure 29-1. Military Retired Pay Division Order ([on or before December 23, 2016](#)) (Continued)

Retired member: “The former spouse is awarded ____ percent (or dollar amount) of the member’s disposable military retired pay.”

Active duty formula: “The former spouse is awarded a percentage of the member’s disposable military retired pay, to be computed by multiplying ____ percent times a fraction, the numerator of which is ____ months of marriage during the member’s creditable military service, divided by the member’s total number of months of creditable military service.”

Reservist formula: “The former spouse is awarded a percentage of the member’s disposable military retired pay, to be computed by multiplying ____ percent times a fraction, the numerator of which is ____ Reserve retirement points earned during the period of the marriage, divided by the member’s total number of Reserve retirement points earned.”

Active duty hypothetical calculated as of time of division, for all members regardless of service entry date: “The former spouse is awarded ____ percent of the disposable military retired pay the member would have received had the member retired with a retired pay base of ____ and with ____ years of creditable service on ____.”



Analyzing the Task

4. Info Required to Draft the Clarification Order

5. Form for Drafting the Clarification Order

- My preference: Cite relevant parts of BOTH the Decree and DRO (if any)
- “Feed” DFAS its own language

4. Hypothetical Retired Pay Award for members entering military service:

A. BEFORE September 8, 1980: “**The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with the rank of _____ and with _____ years of creditable service on _____.**”

B. ON OR AFTER September 8, 1980: “**The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with a retired base (high-3) of _____ and with _____ years of creditable service on _____.**”

AND (ONE OF THE BELOW SECTIONS MUST ALSO BE COMPLETED)

1. If the member entered the service BEFORE September 8, 1980

On the date of the decree, dissolution, annulment, or legal separation _____ (list the date), the member’s military pay grade (rank) was _____, and the member had _____ years of creditable service (list amount of years and months).

2. If the member entered the service ON OR AFTER September 8, 1980:

On the date of the decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member’s military retired pay base (high-3) was \$ _____ (must provide a dollar amount) and the member had _____ years of creditable service (list amount of years and months).





Conclusion

- Establishing Need for Clarification
- Analyzing the Task
 - Trial Court Time Lines
 - DFAS Time Lines
 - Constrains on Drafting the Clarification Order
 - Info Required to Draft the Clarification Order
 - Form of Drafting the Clarification Order





Working with DFAS to Enforce Military Retired Pay Orders

James G. Cramp



Overview

- Enforcement: DFAS' role and Attorney's Role
- Statute of Limitations
 - Starting Former Spouse Retired Pay
 - Former Spouse Survivor Benefit Plan (SBP) Beneficiary Election
 - Judgment for Arrears
- What to Know About Multiple Domestic Support Obligations





Enforcement

1. DFAS' role: limited to none.
2. Attorney's role: it's on your shoulders.





Statute of Limitations

1. Starting FS Retired Pay – None
2. FS SBP Beneficiary
 - a) If waived at retirement, cannot get it at divorce. *See* DODFMR 7000.14-R, Vol 7B, Chapter 44, Paragraph 430504 C.3.
 - b) “Deemed Election (DD Form 2656-10). *See* 10 U.S.C. § 1450(f)(3) (one year from date of court order)
 - c) SM Election at Retirement (DD Form 2556-1).
 - d) Reservist within 90 days after receipt of “20 year letter.” *See* 10 U.S.C. § 1448(a)(2)(B).





Statute of Limitations

3. Judgment for Arrears

- a) Check your State's law
- b) Texas
 - i. If matured at divorce, **2 years**. See Tex. Fam. Code § 9.003(a).
 - ii. If unmatured at divorce, **2 years** from maturity. See Tex. Fam. Code § 9.003(b).
 - iii. Extended to **4 years if SM named "constructive trustee"** as the SOL follows the four-year limit for Breach of Fiduciary Duty under the Civil Practices and Remedies Code § 16.004(a)(5). See *Seabron v. Seabron*, 2013 Tex. App. LEXIS 11205, 2013 WL 4685440 (Tex. App. San Antonio Aug. 30, 2013, pet. denied) (memo op.).





What to Know About Multiple Domestic Support Obligations



1. One obligation, max withholding is **50%** of disposable retired pay. 10 U.S.C. § 1408(e)(1).
2. Two or more obligations, max withholding is **65%** of disposable retired pay. 10 U.S.C. § 1408(e)(4)(B).
3. DFAS pays **first-come, first-served**. 10 U.S.C. § 1408(e)(4)(A).
4. Thought for the day: look for **alternate sources** for child support withholding, so you don't "top out" at the 65% cap.



Thank You

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