

**SERVICEMEMBERS CIVIL RELIEF ACT
(SCRA)
AND
MILITARY ISSUES IN DIVORCE**

**Presented to
WYANDOTTE COUNTY BAR
ASSOCIATION**

March 26, 2026

JOSEPH A. DEWOSKIN

ABOUT ME

- Retired Lieutenant Colonel U.S. Army Reserves
- Solo Practitioner; licensed in MO and KS
- Retained nationwide as an expert to draft Orders Dividing Military Retirement and to testify in court
- 913-387-2359
- dewoskinlawfirm@gmail.com
- <https://dewoskinlawfirm.com>



ABOUT ME

- Joseph (Joe) A. DeWoskin is a solo practitioner in Kansas City, Kansas. He practices in the area of family law, military law, landlord/tenant, Uniform Services and Reemployment Rights Act (USERRA), and general litigation. He is admitted to practice law in Missouri, Kansas, the U.S. Supreme Court, U.S. Federal District Court for the Western District of Missouri, U.S. Federal District Court of Kansas, United States Army Criminal Court of Appeals, and the United States Court of Appeals for the Armed Forces. He has over 30 years of legal experience, including nearly 9 years of service on active duty with the U.S. Army Judge Advocate General's (JAG) Corps. He retired in 2018, as a Lieutenant Colonel, after serving approximately 27 years, both on active duty and in the U.S. Army Reserves. Mr. DeWoskin has been retained to testify and assist as an expert on legal matters relating to divorce involving military personnel, including cases involving the division of military retirement, the Servicemembers Civil Relief Act (SCRA), Uniform Code of Military Justice (UCMJ) and rights under the Uniformed Services Former Spouses Protection Act. Mr. DeWoskin has taught CLEs nationwide on issues including military specific family law issues related to divorce, child support, child custody, and the division of the military retirement, as well as, the SCRA and USERRA. He received his B.A. from Washington & Jefferson College and his J.D. from the University of Missouri-Kansas City School of Law.

***THE
SERVICEMEMBERS
CIVIL RELIEF ACT (SCRA)***

50 US Code Appendix 3901 et seq

PURPOSE OF THE SCRA

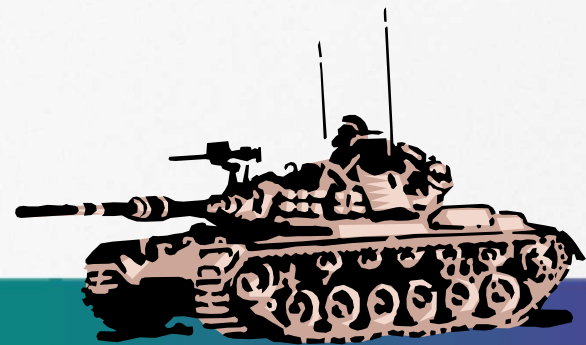
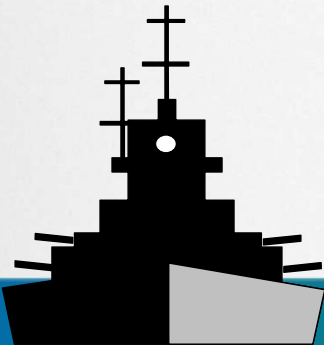
- (1) to provide for, strengthen, and expedite the national defense through protection extended by this chapter to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial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



U.S. SUPREME COURT

“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)



A SHIELD NOT A SWORD



“Who’s covered by the SCRA?”

- Active duty servicemember [SM]
- Mobilized Guard/Reserve
- Nat. Guard [Title 32, federal emergency & funds]
 - Orders should reference 23 USC §502(f)
 - In support of a national emergency declared by the President for a period of more than 30 consecutive days

RESERVES ORDERED TO DUTY -- §3917

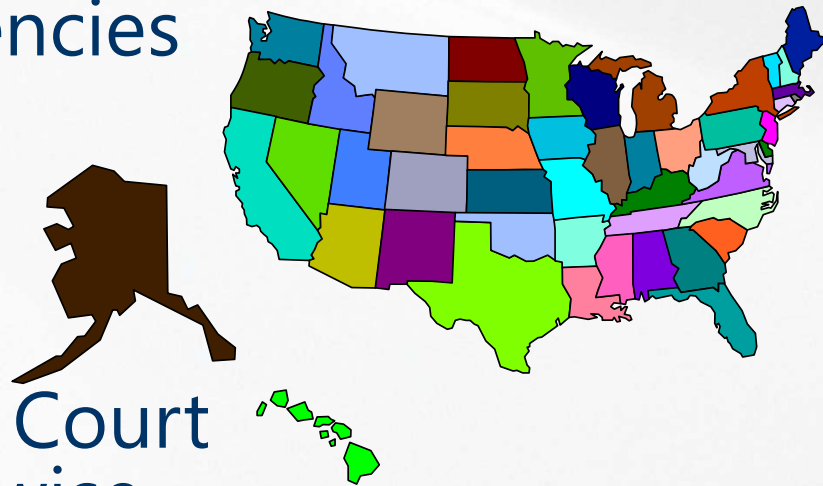
- Members of Reserve component entitled to protection of SCRA from receipt of mobilization orders
 - Allows for time to put affairs in order

JURISDICTION §3912

- All U.S. Courts & Administrative Agencies

- Civil Cases Only

- May apply to ANY Court which would otherwise have jurisdiction



DEFINITIONS

§3911

- “Court” – a court or administrative agency of the U.S. or any State (including any political subdivision of a State) whether or not a court or administrative agency of record
- “Judgment” – defined for the first time
 - “Any judgment, decree, order or ruling, final or temporary.”

DEFINITIONS

§3911 Con't

- Period of military service
 - period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember (SM) is released from military service or dies while in military service.
- Dependent
 - Spouse, child (as defined), individual for whom SM provided more than one-half support for 180 days immediately preceding application for relief.

Dependent Con't

§3959 – entitled to protections if ability to comply with lease, contract, bailment, or other obligation is materially affected by reason of the SM's military service

CERTIFICATES OF SERVICE

§4012

- A Certificate of the Service Secretary shall be prima facie evidence as to all aspects of a person's military service, or non-service.
- Such a certificate shall be furnished upon application (by whom???) – <https://scra.dmdc.osd.mil/scra/#/home>
 - Also includes the last day of active duty of the person who is subject of the inquiry.
 - Can also send a query to each Service (nominal fee; takes time)
- A SM missing in action is presumed to continue in service until accounted for.



Welcome to the Official Servicemembers Civil Relief Act (SCRA) Website



- [Home](#)
- [Single Record Request](#)
- [Multiple Record Requests](#)
- [User Guide](#)
- [FAQs](#)
- [News](#)
- [Contact Us](#)
- [My Account](#)

News and Alerts

[See all news](#)

February 19th, 2026 - SCRA Release Update

SCRA's system release (version 5.28) on Tuesday, February 10, 2026, introduced an enhancement that may impact your submissions of Multiple Record Request files.

What Changed?

- The Feb. 10 release enforced a validation rule for the **LN Field** in multiple record requests.
- Any file submitted with a null value in this field will result in an error.



Welcome to SCRA

SCRA is a program that provides certain protections in lending for servicemembers who are called to Active Duty. From this site:

Users may submit a [Single Record Request](#) to obtain a report certifying Title 10 active duty status for provisions under SCRA. An account is required to use the Single Record Request.

Users may also request [Multiple Record Requests](#) of multiple individuals (or multiple dates for a single individual) to determine Title 10 active duty status for provisions under SCRA. An account is required to use the Multiple Record Request. These users will be able to:

- Create and manage an account in order to retrieve information
- Upload 'Request' files for Multiple Record Requests
- Download 'Result' file(s)
- Download Certificates for Multiple Record Request(s)

Resources

- [User Guide](#)
- [Privacy Notice](#)
- [Help with Browser Certificate Error](#)
- [Download Adobe Reader](#)
- [What is an SCRA Certificate?](#)



Welcome to the Official Servicemembers Civil Relief Act (SCRA) Website



Home	Single Record Request	Multiple Record Requests	User Guide	FAQs	News	Contact Us	My Account
----------------------	---------------------------------------	--	----------------------------	----------------------	----------------------	----------------------------	----------------------------

Login

Login is required in order to request information on multiple individuals or dates, or to check on the status of a previous multiple record inquiry. If you do not have an account, you may [Create an Account now](#).

Username

[Forgot Login?](#)

Password

[Forgot Password?](#)

Login

Need an Account?

[Create an Account](#)

Resources

- [User Guide](#)
- [Privacy Notice](#)
- [Example Request File](#)
- [Annotated Request File](#)
- [Annotated Result File](#)
- [Help with Browser Certificate Error?](#)



Welcome to the Official Servicemembers Civil Relief Act (SCRA) Website



Home

Single Record Request

Multiple Record Requests

User's Guide

FAQs

News

My Account

Single Record Request

Use this page to request a Certificate verifying Active Duty Status for an individual on a specified date.

* Indicates a required field

* SSN

* Repeat SSN

* Birth Date
MM/DD/YYYY(e.g., 09/16/2012)



SSN
OR
Birth Date
Required

* Last Name

First Name

Middle Name

* Active Duty Status

Date
MM/DD/YYYY(Default will be today's date
e.g., 08/19/2014)



Clear

Submit

Tips & Notes

- Without a Social Security Number, DMDC cannot authoritatively assert that this is the same individual that your query refers to. Name and date of birth alone do not uniquely identify an individual.
- Check your data entry before submitting it.
- Response may take up to 15 seconds after clicking "Submit".

Resources

[Download Adobe Reader](#)

[Unexpected results?](#)

PROTECTION AGAINST DEFAULT JUDGMENTS §3931

- Plaintiff's Affidavit, Certificate, etc.
 - Defendant not in military, and
 - Factual basis; or
 - Unable to determine status - court may require plaintiff to pay bond
- If defendant is a military member, court cannot enter default judgment until attorney is appointed to represent military member
- Who pays the fees????

PROTECTION AGAINST DEFAULT JUDGMENTS §3931

- Court *SHALL* Stay Proceedings
 - Minimum 90 Days
 - Application of counsel or court's own motion
- When Court Determines
 - May be a defense that cannot be presented w/o presence of Defendant, OR
 - After due diligence counsel has been unable to contact Defendant or otherwise determine if a meritorious defense exists

PROTECTION AGAINST DEFAULT JUDGMENTS §3931

- Actions by appointed attorney if not able to locate the servicemember:
 - Shall not waive any defense
 - Or otherwise bind the servicemember

PROTECTION AGAINST DEFAULT JUDGMENTS §3931

- Court shall reopen when...
 - SM applies on Active Duty or within 60 days thereafter, and shows
 - Material affect, plus
 - Meritorious defense



What is “Material Affect”???

- No single definition
- Impairment of ability to participate in civil suit due to military duties -OR-
- Impairment of ability to pay financial obligations



Stay of Proceedings When SM Has Notice- § 3932

- Temporary delay in lawsuit until SM can appear -
 - During period of service or within 90 days after date of the termination or release from military service
 - SM has received notice of proceeding
 - Applies at any stage of proceedings



Stay of Proceedings - § 3932

- Does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).
- Should not be the basis for an award of attorney fees.

Stay of Proceedings – §3932

- Automatic 90 day stay if:
 - SM shows military duty materially affects ability to appear, and date when can appear
 - Commanding officer writes letter stating duty prevents appearance and leave not authorized
 - Initial stay; additional stays

STAY PROVISIONS OF SCRA §3932

- May apply for additional stay if duties materially affect at initial application, or later if SM is unavailable to *prosecute or defend the action*.
- If court denies stay request, it must appoint counsel to represent SM
- Codefendants – may proceed with approval of court. (§3935)



-- HOT TIP! --

- How to resist motion for STAY
 - "We don't need you"
 - Demand LES – shows leave available or used
 - Use of technology



-- HOT TIP! --

- How to resist motion for
STAY

- Good faith is implicit
- Stay is not "forever," only so long as material affect lasts



Odd Andersen / AFP

Duration and Term of Stay; Codefendants Not in Service §3935

- Period of Stay – A stay of an action, proceeding, attachment, or execution may be ordered for the period of military service and 90 days thereafter, or for any part of that period
- The Court may set the terms and amounts for installment payments as is considered reasonable by the Court
- Codefendants – If the SM is a codefendant with others not in military service and who are not entitled to relief and protections, the Plaintiff may proceed against the other Defendants with the approval of the Court
- Does not apply to §3932 (Stay of Proceedings if SM has notice) or §4021 (Anticipatory Relief)

WAIVER OF RIGHTS -- §3918

- Member may waive protections
- Waiver must be in writing in a separate document, not less than 12-point type
 - Effective if only executed during or after the SM's period of military service
 - Applies to
 - Contract, lease or bailment
 - Mortgage, trust, deed, lien or other security
 - Repossession, retention, foreclosure, sale, forfeiture, taking possession of property

Exercise of Rights Not to Affect Certain Future Financial Transactions §3919

- Non-Discrimination
- Claiming rights under the SCRA cannot be basis for:
 - Determination by lender that the member is unable to pay
 - Denial or revocation of credit
 - Change in terms of existing credit arrangement
 - Refusal to grant credit to SM
 - Adverse credit report
 - Refusal by insurer to insure SM
 - Identifying SM as member of the NG or Reserves
 - Changing the conditions or terms of insurance

Legal Representatives

§3920

- Recognizes a legal representative of the SM
 - An attorney acting on behalf of a SM; or
 - An individual in possession a POA
- Legal representative can take the same actions as SM

Fines and Penalties Under Contract §3933

- Prohibition of penalties
 - Penalty shall not accrue for failure to comply with the terms of a contract during the period of the stay
- Reduction or waiver of fines or penalties
 - If SM fails to perform an obligation arising under a contract and a penalty is incurred due to the nonperformance, a court may reduce or waive the find or penalty if
 - The SM was in the military service at the time incurred
 - The ability of the SM to perform the obligation was materially affected by such military service

Stay or Vacation of Execution of Judgments, Attachments and Garnishments §3934

- Material affect by reason of military service
- Not able to comply with a court judgment or order
- Court on its own motion or by application of servicemember may
 - Stay the execution
 - Vacate or stay an attachment or garnishment of property, money or debts in the possession of the servicemember before of after judgment

Statute of Limitations §3936

- Any SOL is tolled during military service
- Does not apply to IRS
- Material affect NOT required

Maximum Rate of Interest §3937

- Pre-Service loans incurred by SM or SM and spouse jointly
- Cap of 6% per annum; all excess forgiven
- Have to recompute payments at 6% rate
- Lender cannot accelerate payment of principal
- SM must give written notice w/ copy of orders
- Creditor protection – if court opinion material affect does not apply.
- PENALTY – fined or imprisoned for no more than 1 year or both. Also, a private right cause of action

Evictions and Distress §3951

- Can only evict upon court order
 - Applies to SM or dependents during period of service
 - Material affect applies
 - Look at Consumer Price Index adjusted for amount of rent
 - Court SHALL stay for a minimum of 90 days or adjust the lease obligations to preserve interests of all parties. May extend or shorten stay (justice and equity). Landlord may be given relief under equity
 - Misdemeanor criminal sanctions for knowingly violating
 - Rent allotment from SM pay if court orders.

Installment Contracts for Purchase or Lease §3952

- After SM enters military service, a contract by SM
 - Real or personal property, including motor vehicle
 - Lease or bailment of same
 - MAY NOT be rescinded or terminated for breach of contract occurring before or during the military service nor may property be repossessed without court order
- Applies only to a contract for which a deposit or installment has been paid by SM pre-service
- Misdemeanor offense for violation
- After hearing, court may order repayment to SM to terminate contract and resuming possession by creditor

Installment Contracts for Purchase or Lease §3952

- SHALL stay proceedings if SM's ability to comply is materially affected.
 - Stay may happen on own motion or application of SM
 - Length of stay determined by court as justice and equity require or may make other disposition as is equitable to preserve the interests of all parties

Mortgage and Trust Deeds

§3953

- Applies to obligation on real or personal property owned by SM
 - Originated before SM military service and SM is still obligated; and
 - Secured by mortgage, trust deed, or other security in the nature of a mortgage
- Stay –
 - May grant on own motion and shall upon SM's application when the SM's ability to comply is materially affected.

Mortgage and Trust Deeds

§3953

- Sale or foreclosure
 - Sale, foreclosure or seizure of property not valid if made during or within 1 year after the period of the SM's service except:
 - Upon a court order granted before the sale, foreclosure or seizure with a return made and approved by the court; or
 - If made pursuant to an agreement as provided in §3918 (Waiver of rights pursuant to written agreement)
- Misdemeanor – if knowingly makes or causes to made a sale, foreclosure, or seizure of property that is prohibited.

Settlement of Stayed Cases Relating to Personal Property §3954

- Applies to proceeding to:
 - Foreclose a mortgage
 - Repossess personal property
 - Rescind or terminate a contract for purchase of personal property
- Court may appoint 3 disinterested parties to appraise the property
- Court may order SM's equity repaid as a condition of foreclosure or repossession
 - Only if no undue hardship to SM's dependents will result

Termination of Residential or Motor Vehicle Leases §3955

- Termination by lessee
 - Any time after entry into military service
 - The date of the lessee's military orders, as described
 - Date of the lessee's stop movement order, as described
- Joint Leases
 - Termination of a lease shall terminate any obligation a dependent may have under the lease
- Death of lessee
 - Spouse or dependent may terminate during the one-year period beginning on the date of death of lessee, if the lessee dies while in military service, performing full-time NG duty, active Guard and Reserve duty or inactive-duty training, as described

Termination of Residential or Motor Vehicle Leases

§3955

- Catastrophic Injury or Illness lessee
 - May terminate lease or
 - If lacks mental capacity, due to such injury or illness, the spouse or dependent may terminate the lease
- Covered leases
 - Leases of premises (residential, professional, business, agricultural or similar purpose)
 - Lease executed by or on behalf of person who thereafter and during the term of the lease enters military service
 - SM executes the lease and then receives order for a permanent change of station (PCS) or to deploy with a military unit, as an individual in support of a military operation for a period of not less than 90 days or
 - SM executes a lease upon receipt of military orders for a PCS or to deploy with a military unit or as an individual in support of a military operation for a period of not less than 90 days and

Termination of Residential or Motor Vehicle Leases

§3955

- Receive a stop movement order from SECDEF in response to a local, national or global emergency, for an indefinite period or for a period not less than 30 days, which prevents the SM or SM's dependents from occupying the lease
- Leases of motor vehicles
 - Personal or business transportation (SM or dependents)
 - Enters military service under a call or order of not less than 180 days or does so for less than 180 but, without a break in service, is extended to a period of not less than 180 days
 - SM receives orders
 - PCS (CONUS to OCONUS)
 - OCONS to any location outside that State
 - Deploy for a period of not less than 180 days
 - SM executes a lease upon receipt of military orders and receive a stop movement order.

Termination of Residential or Motor Vehicle Leases §3955

- Manner of Termination
 - In general
 - Delivery by lessee of written notice of such termination, SM's military orders and
 - In the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor not later than 15 days after the date of the delivery of written notice
 - Delivery of notice
 - Hand delivery
 - Private business carrier
 - Mail with sufficient postage, return receipt requested and address to lessor

Termination of Residential or Motor Vehicle Leases §3955

- Effective Date of Lease Termination
 - Lease of Premises, Entrance to military service, PCS, deployed
 - Lease of Premises that provides for monthly payment of rent
 - Effective 30 days AFTER the first date on which the next rental payment is due and payable AFTER the date on which the notice is delivered.
 - Lease of Premises of any other lease
 - Effective on the last day of the month following the month in which notice is delivered
- Stop Movement Order
 - Look at language in the statute

Termination of Residential or Motor Vehicle Leases §3955

- Arrearages and other obligations and liabilities
 - Leases of Premises
 - Amounts that are unpaid for the period preceding the effective date of the lease termination paid on prorated basis
 - No early termination charge
 - Any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the lease, including reasonable charges for excess wear, that are due and unpaid at termination shall be paid by lessee

Termination of Residential or Motor Vehicle Leases §3955

- Arrearages and other obligations and liabilities
 - Leases of Motor Vehicles
 - Amounts that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis.
 - No early termination charge
 - Any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the lease, including reasonable charges for excess wear or use and mileage, that are due and unpaid at termination shall be paid by lessee

Termination of Residential or Motor Vehicle Leases §3955

- Rent paid in advance
 - After the effective date of termination shall be refunded within 30 days of the effective date of the termination of the lease
- Relief to lessor
 - Upon application by lessor to a court before the termination date provided in the written notice, relief granted to the SM may be modified as justice and equity require

Termination of Residential or Motor Vehicle Leases §3955

- Misdemeanor
 - Any person who knowingly seizes, holds or detains the personal effects, security deposit or other property of a SM or dependent who lawfully terminates a lease or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination or attempts to do so shall be fined as provided in Title 18 or imprisoned for one year, or both
- Definitions
 - Military Orders
 - CONUS/OCONUS
 - Permanent change of Station (separation and retirement)

Termination of Certain Consumer Contracts - §3956

- Applies to:
 - Commercial mobile service;
 - Telephone exchange service;
 - Internet access service;
 - Multichannel video programming service;
 - Gym membership or fitness program; or
 - Home security services; and
- Entered into by SM before receiving the military orders in Section (a)(1) of this chapter

- Termination – may terminate at any time AFTER
 - the date SM receives military orders to relocate for not less than 90 days to location that does not support the contract; or
 - the date the SM, while in military service, receives orders for a permanent change of station (PCS), enters into a contract, receives a “top movement order”, effective for an indefinite period of not less than 30 days, that prevents the SM from using the services provided under the contract
- Notice
 - Service provider under the contract shall provide the SM with written or electronic notice of the SM’s rights
- Manner of termination
 - Written or electronic notice and a copy of SM’s orders to the service provider, delivered in accordance with industry standards for notification of termination, and date of service termination

- Additional individuals covered
 - Spouse, dependents of
 - SM who dies in military service or of a member of the reserve components who dies performing full-time National Guard duty, active Guard or Reserve duty or inactive duty training
 - Incurs catastrophic injury or illness
 - Reservist performing military service or National Guard member performing full time duty, active Guard and Reserve duty, or inactive duty training
 - Spouse or dependent of a SM, accompanying the SM for the relocation
 - Retention of telephone number
 - Allowed if certain requirements are met, including relocation for a period of three years or less, so long as resubscribes during the 90-day period beginning on the last day of such period of relocation

- Family Plans

- Commercial mobile services
- May terminate re: SM if allowed to as previously discussed; re designated beneficiaries allowed if all join SM during the period of relocation

- Other Obligations and Liabilities
 - No early termination charge
 - Any tax or other obligation or liability of SM that is due and unpaid or unperformed at time of termination shall be paid or performed by SM.
 - If re-subscribes in that 90-day window, no charge may be imposed to reinstate the service other than usual and customary for installation or acquisition of customer equipment any other subscriber would be required to pay
 - SM shall return any provider-owned consumer premises equipment not later than 10 days after the date on which service is disconnected
 - NLT 60 days after the effective date of termination, provider shall refund to SM any fee or other amount that may be due

Enforcement of Storage Liens

§3958

- ONLY Court ordered enforcement
- Limitation – may not, during period of military service and for 90 days thereafter, foreclose or enforce any lien on property or effects
- Lien defined – storage, repair, or cleaning of the property or effects
- Court shall stay or adjust the obligations of all parties if SM applies and ability to comply is materially affected
- Court may do same on own motion
- Misdemeanor to knowingly use self-help

Inappropriate Use of Chapter §4011

- If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this chapter, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

Anticipatory Relief

§4021

- SM may during military service or within 180 days of termination or release apply to court for relief
 - Any obligation or liability incurred by the SM before the SM's military service or
 - From tax or assessment falling due before or during SM service
- Tax liability or assessment – if SM is not able to comply with terms of such obligation or liability or pay such tax or assessment due to being materially affected by reason of military service, Court may after appropriate notice and hearing, grant the following relief:

Anticipatory Relief

§4021

- Stay of Enforcement of Real Estate Contracts
 - Obligation payable in installments under a contract for purchase of real estate or secured by mortgage or other instrument, court may grant a stay of enforcement
 - During the SM's period of military service; and
 - From the date of termination or release from military service or from the date of application if made after termination or release from military service
 - Any stay shall be
 - For a period equal to the remaining life of the installment contract, plus a period of time equal to the period of military service of SM or any part of such combined period; and
 - Subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from military service...
- Stay – during SM's military service and from the date of termination or release from military service
- No penalties imposed for claiming protections

Business or Trade Obligations

§4026

- If trade or business of a SM has an obligation or liability
 - SM personally liable
 - Assets of SM not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the SM's military service
- Relief to obligors
 - Upon application, relief may be granted by this section to a SM may be modified as justice and equity require

Enforcement by Attorney General

§4041

- Attorney General may commence a civil action in any appropriate district court against any person
 - Engages in a pattern of practice of violating this chapter
 - Engages in a violation that raises an issue of significant public importance
- Relief
 - Grant appropriate equitable or declaratory relief
 - Award monetary damages to any person aggrieved by violation
 - Assess civil penalty (to vindicate public interest)
 - In an amount not exceeding \$55,000 (first violation)
 - In an amount not exceeding \$110,000 (subsequent violations)
- Intervention
 - Timely application, person aggrieved may intervene and obtain appropriate relief available under section 4042, with costs and attorney fees

Private Right of Action §4042

- Any person aggrieved may in a civil action
 - Obtain any appropriate equitable or declaratory relief
 - Recover all other appropriate relief, including monetary damages
 - Be a representative party for a class action lawsuit, in accordance with the FRCP, notwithstanding any previous agreement to the contrary
- May be awarded costs of actions, including reasonable attorney fees

Preservation of Remedies

§4043

- Nothing in Sections 4041 or 4042 shall be construed to preclude or limit any remedy otherwise available under other law, including consequential and punitive damages

Other Sections to Know About

- §3957 – Protection of Life Insurance Policy
- §3971 – Life Insurance
- §3991 – Taxes Respecting Personal Property, Money, Credits, and Real Property
- §4001 – Residence for Tax Purposes
- §4013 – Interlocutory Orders
- §4023 – Professional Liability Protection
- §4024 – Health Insurance Reinstatement
- §4025 – Guarantee of Residency for Military Personnel and Spouses of Military Personnel
- §4027 – Guarantee of Residency for Spouses of Servicemembers

CHILD CUSTODY PROTECTION §3938

- (a) If a court renders a temporary child custody order based solely on a deployment or anticipated deployment of a parent who is a servicemember, the court shall require that the temporary order shall expire not later than the period justified by the servicemember's deployment
- (b) If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, no court may consider the servicemember's absence by reason of deployment, or the possibility of deployment, as the sole factor in determining the best interest of the child

- (c) No Federal jurisdiction or right of action or removal
- (d) If State law provides a higher standard of protection to the rights of the deploying servicemember, the court shall apply the higher State standard
- (e) Deployment means the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders— (1) that are designated as unaccompanied; (2) for which [dependent](#) travel is not authorized; or (3) that otherwise do not permit the movement of family members to that location.



QUESTIONS?

Military Issues In Divorce

How Military Service Can Impact Custody and Parenting Time

- Military parents are concerned what will happen if they are deployed and the other parent gets a temporary custody order or tries to get a permanent change in custody and support.
- May want to place something in parenting plan/court order that if military member deploys, then the parties agree to a temporary change of custody until the military member returns.
 - Problem with this approach – child custody is modifiable looking at the best interest of the child. The non-custodial parent can go back to court to make this temporary change permanent
- Relocation/Permanent Change of Station

What Happens When Deployed?

- Deployment?
 - Length
 - Where?
 - Purpose?
 - Availability to Zoom, FaceTime, Talk, etc.?
- Mobilization (Reserve, National Guard)
- Permanent Change of Station
- Retirement

Family Care Plan

- Each branch has its own Family Care Plan
- This is not a court document.
- Used for the purpose of identifying who will care for the minor children if a single parent or dual military family are deployed.
- If joint custody is in place should put former spouse in the plan.
 - Fear of losing custody or child support is not a sufficient reason for excluding.
- Failure to do a Family Care Plan – separation from the military

Relocation Requests

- How early in the process will you know if your client is relocating, retiring, PCSing?
- What actions should be taken to protect parenting time/custody issues?
- How to protect your client (servicemember or soon to be former spouse)?
- Long distance parenting time being placed in Parenting Plan
- Impact on child support?

CHILD CUSTODY PROTECTION 50 U.S.C.A. §3938

(a) If a court renders a temporary child custody order based solely on a deployment or anticipated deployment of a parent who is a servicemember, the court shall require that the temporary order shall expire not later than the period justified by the servicemember's deployment

(b) If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, no court may consider the servicemember's absence by reason of deployment, or the possibility of deployment, as the sole factor in determining the best interest of the child

(c) No Federal jurisdiction or right of action or removal

(d) If State law provides a higher standard of protection to the rights of the deploying servicemember, the court shall apply the higher State standard

(e) Deployment means the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders— (1) that are designated as unaccompanied; (2) for which dependent travel is not authorized; or (3) that otherwise do not permit the movement of family members to that location.

Reminder - (d) If State law provides a higher standard of protection to the rights of the deploying servicemember, the court shall apply the higher State standard

KSA 23-3217. Child custody and parenting time for parents deployed by the military; modification of orders; hearing

- (1) "Deployment" means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.
- (2) "Mobilization" means the call-up of a national guard or reserve service member to extended active-duty status. "Mobilization" does not include national guard or reserve annual training.
- (3) "Service member" means any member serving in an active-duty status in the armed forces of the United States, the national guard or the armed forces reserves.
- (4) "Temporary duty" means the transfer of a service member from one military base to a different location for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.
- (5) "Unaccompanied tour" means a permanent change of station for a service member where dependent travel is not authorized.
- (6) "Nondeploying parent" means the parent not subject to deployment, mobilization, temporary duty or unaccompanied tour orders from the military.

KSA 23-3217 Con't

- (b) The absence, relocation or failure to comply with a custody or parenting time order by a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or parenting time order.
- (c) Any court order limiting previously ordered custodial or parenting time rights of a parent due to the parent's deployment, mobilization, temporary duty or unaccompanied tour shall specify the deployment, mobilization, temporary duty or unaccompanied tour as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent to provide the court with 30 days advance written notice of any change of address and any change of telephone number

KSA 23-3217 Con't

- (d) The court, on motion of the parent returning from deployment, mobilization, temporary duty or unaccompanied tour, seeking to amend or review the custody or parenting time order based upon such deployment, mobilization, temporary duty or unaccompanied tour, shall set a hearing on the matter that shall take precedence on the court's docket and shall be set within 30 days of the filing of the motion. Service on the nondeploying parent shall be at such nondeploying parent's last address provided to the court in writing. Such service, if otherwise sufficient, shall be deemed sufficient for the purposes of notice for this subsection. For purposes of this hearing, such nondeploying parent shall bear the burden of showing that reentry of the custody or parenting time order in effect prior to deployment, mobilization, temporary duty or unaccompanied tour is no longer in the best interests of the child.

KSA 23-3217 Con't

- (e) If the parties in a custody or parenting time matter concerning a parent who receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military have entered into a parenting plan pursuant to [K.S.A. 23-3213](#), and amendments thereto, that includes provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

KSA 23-3217 Con't

- (f) If a parent with parenting time rights receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting time rights, the court may delegate the parent's parenting time rights, or a portion thereof, to a member or members of the service member's family with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time rights is in the best interests of the child.
- (g) Upon motion of a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, the court shall, for good cause shown, hold an expedited hearing in custody and parenting time matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

KSA 23-3217 Con't

- (h) Nothing in this section shall preclude a parent from petitioning for a modification of a custody or parenting time order based upon a material change in circumstances.
- (i) Any order entered pursuant to this section shall provide that:
 - (1) The nondeploying parent shall reasonably accommodate the leave schedule of the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders;
 - (2) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders and the child during the period of such deployment, mobilization, temporary duty or unaccompanied tour; and
 - (3) the parent subject to deployment, mobilization, temporary duty or unaccompanied tour shall provide timely information regarding such parent's leave schedule to the nondeploying parent. Willful violation of such order shall constitute contempt of court.
- (j) Nothing in this section shall alter the duty of the court to determine custody or parenting time matters in accordance with the best interests of the child.

Uniform Services Former Spouses Protection Act (10 USC 1408)

- Passed in 1981
- Titled "Payment of retired pay or retainer pay in compliance with court orders"
- What it does not do – automatically entitle a former spouse to a portion of the SM's military retirement
- The former spouse must have been awarded the share by a state court
- It authorizes, but does not require, the State court to divide military retired pay as marital asset in a divorce proceeding
- Provides a mechanism for a former spouse to enforce retired pay as property awarded by direct payment from the SM's retired pay
- Retired pay arrears cannot be collected under the USFSPA

Uniform Services Former Spouses Protection Act (10 USC 1408) Con't

- Definitions
 - Court
 - Court of competent jurisdiction
 - Court Order
 - Final decree of divorce, dissolution, annulment, or legal separation issued by a court or
 - a court ordered, ratified, or approved property settlement agreement incident to such a decree or
 - Support order, as defined by section 453(p) of the Social Security Act (42 USC 653(p) which –
 - is issued in accordance with the laws of the jurisdiction of that court
 - Provides for payment of
 - Child support
 - Alimony
 - Division of property (dollars or percentage of disposable retired pay)

Uniform Services Former Spouses Protection Act (10 USC 1408) Con't

- Definitions
 - Disposable Retired Pay – total monthly retired pay to which a member is entitled less amounts which –
 - Are owed to the US for previous overpayment of retired pay or recoupment
 - Deducted from retired pay as a result of court-martial forfeiture
 - Under Chapter 61 of 10 USC, equal to the amount of retired pay computed using a percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list)
 - Deducted because of an award of Survivor Benefit Plan to spouse/former spouse due to a court ordered award

Uniform Services Former Spouses Protection Act (10 USC 1408) Con't

- (b) Effective Service of Process
- (c) Authority for court to treat retired pay as property of the member and spouse
- (d) Payments by Secretary concerned to (or for the benefit of) spouse or former spouse
- (e) Limitations (total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay)
 - More than one court order – first come first served (do not procrastinate)
- (h) Benefits for dependents who are victims of abuse by members losing rights to retired pay
- (l) Garnishments to satisfy a judgment rendered for physically, sexually, or emotionally abusing a child

Jurisdiction

- DFAS will only honor orders dividing retirement if the issuing court exercised personal jurisdiction over the member by reason of –
 - residence in the territorial jurisdiction of the court (other than by military assignment)
 - domicile in the territorial jurisdiction of the court; or
 - consent to the jurisdiction of the court (generally best approach)
- No federal definition of domicile in the Uniform Services Former Spouses' Protection Act
- State law and cases decide

Summary of USFSPA

- What it does not do – automatically entitle a former spouse to a portion of the SM's military retirement
- The former spouse must have been awarded the share by a state court
- It authorizes, but does not require, the State court to divide military retired pay as marital asset in a divorce proceeding
- Provides a mechanism for a former spouse to enforce retired pay as property awarded by direct payment from the SM's retired pay
- Retired pay arrears cannot be collected under the USFSPA

Legacy Retirement v. Blended Retirement

History

- National Defense Authorization Act of 2016
 - Provided a modernized retirement plan that included additional retirement savings
 - Took effect in 2018
 - All members serving as of Dec 31, 2007, were grandfathered into legacy
 - Not automatically enrolled in BRS
 - Members with fewer than 12 full years of service or 4,320 points as of Dec 31, 2007, given an option to opt in
 - Could not be changed at a later date
 - After December 31, 2017 – automatically enrolled in BRS.
 - Approximately 81% of those member who joined left with no retirement benefit; Now about 85% will receive a retirement benefit
 - Completely changed the old way of looking at military retirement in a divorce.

Legacy Retirement

- Entered before January 1, 2006 – grandfathered in
- After December 31, 2005, but before January 1, 2008
 - Able to choose to enter BRS or stay in Legacy System
- “High-3” retirement system
 - providing a defined retirement pay benefit if the servicemember (SM) completes 20 years or more of service
 - what most people are familiar with historically
- Formula – $2.5\% \times \text{Years Served} \times \text{Retired Pay Base}$ after completing 20 years of service, only

Blended Retirement System

- combines a reduced-rate defined benefit pension
 - plus a TSP account where the Government will automatically contribute an amount equal to 1% of the SM's basic pay and match contributions up to an additional 4%, for a total contribution of up to 5%
 - Even if the SM does not complete a 20-year career, the majority will receive some portable retirement benefit upon separation

BRS Components

- Automatic and Matching Contributions to Thrift Savings Plan
- Continuation Pay
- Full Retired Pay

Thrift Savings Plan (TSP)

- Similar to 401(k) or similar plans offered by private corporations
- Same defined contribution plan as DoD and federal government civilians take advantage of for their retirement savings.
- Service Automatic (1%) Contribution – must have completed 2 years of service
- Service Matching Contributions – if elect to contribute a portion of own pay into account, service will match up to 4% of basic pay
- No more than 5% of basic pay
- TSP account is portable

Options for Collecting Retirement Pay Active Duty

- Automatic and Matching Contributions; Continuation Pay; Full Retired Pay
 - Full retired pay as a monthly annuity
- or
- Lump sum plus reduced retired pay as a monthly annuity
 - 50% or 25% of monthly retired pay annuity bumps back up to 100% at full retirement age (67 in most cases)

Options for Collecting Retirement Pay Reserve Component

- Thrift Savings Plan Contributions; Continuation Pay
- Monthly Annuity For Life
 - $2\% \times \text{Years Served} \times \text{Retired Base Pay (High-3)}$

or

- Lump sum with reduced retired pay as a monthly annuity
 - 50% or 25% of monthly retired pay at age 60 (or earlier based on qualifying active service) annuity bumps back up to 100% at full retirement age (67 in most cases)

Continuation Pay

- One-time, mid-career bonus payment in exchange for agreement to perform additional obligated service.
- Between completion of eight years of service but before completion of twelve years of service (calculated from Pay Entry Base Date)
- Encourage SM to continue to serve in the Uniformed Services.
- Direct cash pay out (bonus)

Drafting Military Pension Division Orders (MPDO)

National Defense Authorization Act for Fiscal Year 2017

- Section 641
- Signed by President Obama on December 23, 2016, amended the definition of disposable pay in the Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408
- 10 U.S.C. § 1408(a)(4)(B)
 - Lays out the "Frozen Benefit Rule" – for a Decree of Divorce, Dissolution or Annulment or Legal Separation that occurred after December 23, 2016

NDAA FY17

In the case of a division of military retired pay as property (that becomes final prior to the date of a member's retirement), the military member's disposable income is limited to "the amount of basic pay payable to the member for the member's pay grade and years of service at the time of the court order" and increased by the cost-of-living amounts granted to military retirees from the time of the (divorce) to the date the member retires

- Military (Defense Finance and Accounting Service (DFAS) and Coast Guard Pay and Personnel Center) will only pay a former spouse the marital share that exists on the day of divorce
 - Interpreted by DFAS as date of:
 - Decree of Divorce;
 - Annulment; or
 - Legal Separation
 - Look at local rules or state statutes for asset and debt snapshot – date of filing? Date of separation?

- Redefined Disposable Pay

- (i) the amount of basic pay payable to the member for the member's pay grade and years of service at the time of the court order, as increased by
- (ii) each cost-of-living adjustment that occurs under section 1401a(b) of this title between the time of the court order and the time of the member's retirement using the adjustment provisions under that section applicable to the member upon retirement.

What Does This Mean?

- Federal Government is telling states how to divide a marital asset.
- No opt out
- No exceptions for the parties to agree to negotiate something different if want approval by DFAS or Pay Center.
- What happens if parties do negotiate something different?
 - DFAS/Pay Centers will not enforce a higher amount.
 - Can the State Court still enforce a higher payment?
- Former spouse will receive a portion of the amount the servicemember would have received had he/she retired on that date with cost-of-living allowance increases.

Defense Finance and Accounting Service Guidance

- In order to enable the designated agent (DFAS, Garnishment Operations) to calculate the “new” disposable retired pay amount, a court order entered after December 23, 2016, (in a case where the order becomes final prior to the member’s retirement) that provides for a division of military retirement pay must provide the below listed three (3) variables.

- If the member entered military service on or after September 8, 1980:
- A fixed amount, a percentage, a formula or a hypothetical that the former spouse is awarded;
 - The member's high-3 amount at the time of divorce (the actual dollar figure);
 - The member's years of creditable service at the time of divorce; or in the case of reservist, the member's creditable reserve points at the time of divorce.

Terms Defined

- Fixed amount – “The court awards Petitioner \$1,500.00 of the disposable retired pay of Respondent.”
 - Excludes cost-of-living adjustment (COLA)
 - Benefits servicemember
- Percentage Award – “The former spouse is awarded 47% of the servicemember’s military retired pay.”
 - Can be used when all numbers are known
 - Includes COLA

Terms Defined

- Formula Award – “Wife shall receive 50% of the Husband’s disposable retired pay times a fraction, the numerator being the months/points of marital pension service, and the denominator being the total months/points of service by Husband.”
 - Expressed as a ratio
 - Must provide numerator
 - DFAS or Retired Pay Center will provide denominator

Terms Defined

- Hypothetical Award – “Former spouse is granted 50% of what an Army Sergeant First Class (E-7) would receive if she were to retire with 18 years of military service and High-3 pay of \$___ per month.”
 - Rank or status different from when the servicemember retires
 - DFAS or Retired Pay Center will calculate the hypothetical amount and compute a ratio to the actual retired pay to calculate the amount to which the former spouse should receive

What Does This Mean Moving Forward?

- Frozen Benefit Rule
 - Stops the clock at the time of divorce.
 - No ability to obtain the benefit of future promotions
- Can the Time Rule Formula still be used?
- What happens if the non-military spouse has his/her own retirement plan?
- What is fair and equitable?
- What is the *High Three*?

High-3 Defined

- Average of the highest three years of compensation (base pay) based on active-duty pay tables.
- Prior to divorce date.
- Most recent 36 months.
- Need to use an actual dollar figure.
- Need to know rank, date of rank, and Pay Entry Base Date.

Dividing the Thrift Savings Plan (TSP)

- Similar to 401(k) or similar plans offered by private corporations
- Same defined contribution plan as DoD and federal government civilians take advantage of for their retirement savings.
- Service Automatic (1%) Contribution – must have completed 2 years of service
- Service Matching Contributions – if elect to contribute a portion of own pay into account, service will match up to 4% of basic pay
- No more than 5% of basic pay
- TSP account is portable

Thrift Savings Plan (TSP) Con't

- How to find out if there is a TSP?
 - Look at Leave and Earnings Statement
- Can be used for payment for child support

Thrift Savings Plan (TSP) Con't

- 5 USC 84, Subchapters III-IV
- 5 C.F.R. Part 1653 (Subpart A for court orders dividing the TSP and Subpart B for orders regarding alimony or child support)
- www.tsp.gov
- Plan administrator is Accenture Federal Services (May 24, 2022)
- Cost for processing the Order is \$600 – upon receipt of the Order, will subtract from the account as a one-time service charge.

Thrift Savings Plan (TSP) Con't

- Court Order = Retirement Benefits Court Order (RBCO)
- Process:
 - Placed in temporary TSP account
 - Remain for 60 days while payee decides what to do
 - If no decision, then disbursed to payee (20% withholding for taxes plus penalty for early distribution)
- Should it include passive gains/losses? (State law)
- Use Model RBCO language or can draft own
 - <https://qoc.rk.tsp.gov/qoc/b/alt-flow-federal.htm?execution=e3s1>
- Addendum to RBCO (include SSN and DOB)

SBP- What Does It Really Provide?

- SBP=Survivor Annuity
 - a marital asset
 - divided at the time of divorce
 - maybe later?
- Way for the former spouse to continue receiving the servicemember's (SM) military retirement if SM dies first.
 - provides the former spouse an "annuity."
 - continued monthly payment for the lifetime of the beneficiary.
 - the amount of the benefit is a percentage of the servicemember's retirement benefit based on the election made.

Survivor Benefit Plan

- Must be ELECTED
- Must be REGISTERED with DFAS within 1 YEAR of divorce or SBP being awarded

SBP BASICS

- Only one spouse can receive (but look at the recent change in the law if recipient dies first)
- Cost is 6.5% of the base amount (usually full retired pay but can be for as low as \$300) for “regular retirement” and approximately 10% for “non-regular retirement”.
- Premium is taken off the gross amount of retired pay with each party bearing a portion of the cost
 - What are the ways around this?
- Beneficiary, if survives retiree, receives 55% of base amount for rest of life
- Remarriage of beneficiary before age 55 suspends the SBP benefits.
- What if former spouse predeceases the retiree/servicemember?
- Use clear, not vague/ambiguous language when awarding

SBP Defined

- Can be agreed to by the Parties
- Court can order SBP coverage
- Without it, retirement payments to former spouse end at the retiree's death
- Unitary – can't be shared with SM's new spouse
- Premiums come "off the top" before arriving at the Disposable Retired Pay amount (assuming court-ordered)
- Avoid SGLI/VGLI as alternative (Ridgeway, U.S. Supreme Court, 1981)

Cost of the SBP?

- Cost – Depends on level of coverage chosen.
 - A monthly deduction is taken from the Retiree's pay to pay for the SBP coverage.
 - No more than 6.5% of the gross retired pay. (active duty)(regular)
 - Approximately 10% (guard/reserve)(non-regular)
- Full Coverage:
 - Cost of the SBP is based on the full amount of the gross pay. For example, if the servicemember receives retired pay in the amount of \$1,000 per month and full SBP coverage is elected, the monthly cost will be \$65 (active duty) or \$100 (guard/reserve).
- Reduced Coverage
 - It is possible to elect a lower level of SBP coverage.
 - There is a minimum level of coverage required. (\$300)

Is the SBP Always Available?

- SBP is a marital asset.
- Non-receipt of a DD 2656 form (DD Form 2656-10 or DD Form 2656-1).
- Will lose if former spouse remarries before age 55.
- Can it be negotiated?
- What if not awarded at the time of divorce?

Negotiating for the SBP

- If representing Spouse:
 - Security – knowledge that income will always be coming in.
 - No requirement to qualify for coverage, as opposed to insurance.
 - Servicemember or Retiree is unable to terminate, without former spouse consent.
 - Why should the marital asset (retirement) stop at time of death?
 - Will the costs be shared?
 - Focus on SBP, not alternatives
 - Make sure language is clear and concise

Negotiating for the SBP

- During Life: Specify Share of the Pension
- At Death: If SM dies after divorce, SBP coverage to "Former Spouse"

WHAT TO SAY:

"Servicemember (or retiree) will immediately elect spouse/former spouse as SBP Former Spouse Beneficiary with full retired pay as the base amount."

Negotiating Against the SBP

- Don't mention it – can it be awarded later on?
- Cost – expensive in comparison to term life insurance
- Why should retiree/servicemember pay for the SBP, if he/she is not deriving a benefit?
- Inflexible –
 - once chosen, generally can't be cancelled
 - No equity build-up
 - No cash surrender value
 - No return of premium if former spouse predeceases
- Life insurance instead
- Lower base amount

Options Other Than Awarding the SBP

- Life Insurance? – but not SGLI (See [Ridgeway](#))
- Are there other marital assets?
- Maintenance?

Wording the SBP Clause Correctly

- Bad Wording:
 - Former Spouse shall receive 37.5% of all the military retirement benefits of the SM, including everything attributable to the SM's service in the military towards a pension and every pension benefit to which might be entitled

Wording the SBP Clause Correctly

- If Waived:
 - The Former Spouse is not entitled to and knowingly waives the former spouse coverage as the beneficiary of the Military Member's Survivor Benefit Plan (SBP).
- If Awarded:
 - Former Spouse is entitled to former spouse coverage as the beneficiary of Servicemember's Survivor Benefit Plan (SBP) as set out below.
 - BUT IS THAT ALL YOU NEED TO SAY???

What Else Should Be In The Clause?

- Respondent shall provide coverage for Petitioner through the Survivor Benefit Plan (SBP) as follows:
 - a. Petitioner shall be named Respondent's former spouse beneficiary, with his monthly retired pay as the base amount. Respondent shall do nothing to reduce or eliminate her benefits.
 - b. Petitioner shall effectuate a deemed election for former spouse coverage within one year of the entry of this order by sending a certified copy of this order to DFAS along with a certified copy of the divorce decree and an executed DD Form 2656-10.
 - c. If Respondent does anything that changes the former spouse election, then an amount equal to the present value of SBP coverage for Petitioner shall, at the death of Respondent, become an obligation of his estate. In addition, Petitioner shall be entitled to such remedies for breach as are available to her in a court of law.

“Deemed Election”

- The Former Spouse has a Right to Request SBP Coverage (aka “Deemed Election”)
 - Servicemember has a court order to elect former spouse SBP, then a Former Spouse can submit his/her own request to DFAS for former spouse SBP coverage.
 - If the divorce was more than a year before the member’s retirement, still can submit the “deemed election” request.
 - **MUST BE SUBMITTED WITHIN ONE YEAR OF THE ORDER REQUIRING FORMER SPOUSE SBP COVERAGE**
 - If submitted by the former spouse within one year of the court order, requiring former spouse SBP coverage, then the former spouse SBP coverage will be entered on the member’s account, even if the member did not make a former spouse election.

When to File to Elect SBP

- Two Deadlines
 - One year from date of divorce if SM makes the election and also signed by the Former Spouse (DD Form 2656-1)
 - One year from date of SBP Order if Former Spouse makes "deemed election" (DD Form 2656-10)

1 Year to File??

- There is a one-year time frame to elect SBP.
- If fail to make the election, could be lost forever.
 - Board of Correction for Military Records
- If forget to mention, may still be able to obtain as an omitted asset.

What Needs to be Done?

- Submit a copy of the court order which requires the former spouse SBP coverage
- Submit the completed DD Form 2656-1 or 2656-10 within one year of when the order was issued.
- Can be made prior to the member's retirement, so long as the request is made within one year of when the order was issued.
- Mail or fax a copy of the court order and the Former Spouse SBP Deemed Election form.
- Mail the Former Spouse Deemed Election request to:
DFAS Garnishment Operations
PO Box 998002
Cleveland OH 44199
- Fax number 1-877-622-5930

More Recent Changes

- Special Needs Trust

<https://www.dfas.mil/retiredmilitary/provide/sbp/special-needs-trust.html>

- NDAA FY2015
 - Allows a person who has established a Special Needs Trust to specify payment of a dependent-child SBP annuity to be directed to that Trust.
 - Previously had to pay directly to the special needs child.
- Rules to be followed:
 - Must have previously elected Spouse and Child or Child only coverage for a disabled child under SBP.
 - Must be in compliance with federal law (42 USC §1396p(d)(4)(A) or (C)).
 - Directed to the Special Needs Trust rather than directly to the child (in writing Section X)
 - Child must be a “Dependent Disabled Child”
 - Must include – name of trust, tax ID number, a licensed attorney’s statement that the trust satisfies requirements of self-settled special needs trust per federal and state law OR submit a certification from the Social Security Administration that it is a Special Needs Trust pursuant to Federal Law
- Decision and trust must be irrevocable.

Former Spouse Dies...What now?

- NDAA FY16 amended the Survivor Benefit Plan (SBP) statute to provide a member who had made an election to provide SBP or Reserve Component SBP (RCSBP) coverage for a former spouse the ability to cover a subsequent spouse if the former spouse dies.
- The enactment of this legislation included provisions in the form of an open season period to accommodate members whose covered former spouse beneficiaries were already deceased when the legislation was enacted.

Summary

- Cost: 6.5% of selected base amount (active)
approximately 10% (guard/reserve)
- Payment: 55% of selected base amt at member's death
- Court can order SBP coverage
- Without it, pay ends at member's death
- Application deadlines!
- “Unitary” - can’t split between former spouse & current spouse

“RECENT” CASE LAW

- Howell v. Howell
 - 137 S.Ct. 1400 (2017)
 - Unanimous decision
 - “...reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. All such orders are thus pre-empted.”

HISTORY

- 1983 – Uniformed Services Former Spouses Protection Act 10 USC §1408
- 1989 – *Mansell v. Mansell*, 490 U.S. 581 (1989)
 - Barred division of waived military retired pay as marital property upon divorce
- 2017 – *Howell v. Howell* decision
- MEANS – The *Howell* decision effectively states:
 - *Mansell* was correct in applying the Uniformed Services Former Spouses Protection Act. It was a very limited action by Congress, not a blanket waiver of preemption.

Howell history

- 1991 – Mr. and Mrs. Howell divorce in Arizona; pension divided 50/50
- 1992 – Mr. Howell retires from the Air Force
- 2005 – Mr. Howell awarded VA Disability rating 20% - begins receiving \$250 waiver, reducing each party's share of military retirement by \$125
- 2013 – Mrs. Howell files Motion to Enforce
- 2014 – AZ Ct Appeals affirmed trial court ruling that vested rights could not be taken away, relying on AZ statute
- 2015 – AZ Supreme Court upheld Appellate Court, including no federal preemption under the Former Spouses Protection Act. Therefore, indemnification was proper remedy for enforcement.

HOWELL TAKE AWAYS

- “A federal statute provides
 - that a State may treat as community property, and divide at divorce, a military veteran’s retirement pay. See 10 U.S.C. §1408(c)(1).
 - The statute, however, exempts from this grant of permission any amount that the Government deducts ‘as a result of a waiver’ that the veteran must make ‘in order to receive’ disability benefits.”

HOWELL TAKE AWAYS CON'T

- "...reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress.
- All such orders are thus pre-empted."

HOWELL TAKE AWAYS CON'T

- "A state court may not order a veteran to indemnify a divorced spouse for the loss in the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service-related disability benefits."

What Does This Mean?

- Federal Government is telling states how to divide a marital asset.
- No exceptions for the parties to agree to negotiate something different if want DFAS/Pay Centers to enforce
- Indemnification barred?
- What happens if parties do negotiate something different?
 - DFAS/Pay Centers will not enforce a higher amount.
 - Can the State Court still enforce a higher payment?
 - What happens to cases that were decided prior to the Howell case?
 - How to advise your client as the servicemember or as the spouse?

What Happens Now?

- Expansion of the Howell Ruling
- Follow Howell Ruling
- Distinguish Howell Ruling
 - Res Judicata
 - Contractual Indemnification
 - Court Ordered Indemnification

Case Law Post Howell

- Follow Howell
 - Can Disability Pay be considered as income in awarding alimony? (Colafrancesco v. Colafrancesco, 2022 Ala. Civ. App. LEXIS 14 (2022) ; 2022 WL 419778 (2022) Alabama
 - Federal Preemption – In re Marriage of Tozer, 410 P.3d 835 (2017) Colorado
 - Res Judicata – In re Marriage of Babin, 56 Kan.App.2d 709 (2019) Kansas

Case Law Post Howell

- Do Not Follow Howell
 - Contractual Indemnification?
 - Gross v. Wilson, 424 P.3d 390 (2018) (Alaska)
 - Jones v. Jones, 505 P.3d (2022) (Alaska)
 - Child Support? (not property division but support)
 - Alwan v. Alwan, 70 Va.App. 599 (2019)
 - Under VA law, veterans' benefits are a source of income for child support purposes
 - Howell did not address use of military disability benefits as a source of funds in making a child support award
 - See Rose v. Rose, 107 S.Ct. 2029 (1987)

Case Law Post Howell

- Distinguish Howell
 - Res Judicata
 - Edwards v. Edwards, 132 N.E.3d 391 (2019) (Indiana)
 - In re Marriage of Weiser 14 Wash.App.2d 884 (2020) (Washington) – Howell only applies to property division imposed by the court, not to agreements by the parties
 - Foster v. Foster, 509 Mich.109 (Foster II)(Michigan)
 - Doctrine of Res Judicata applies to judgments that divide military retirement and disability benefits
 - Not subject to collateral attack

THE END...?

Caselaw Con't

Numann v. Gallant, 555 P.3d 527; Supreme Court of Alaska (September 6, 2024)

- USFSPA did not prohibit court from finding that retiree owed former spouse the marital share of the military retirement from separation date rather than the date of divorce
- Great history of the USFSPA
- Regarding arrears the court found that the "USFSPA creates no barriers to recovering the non-military spouse's pension shares directly from the military spouse so long as the court's award complies with Alaska state law."

- Lesson - Know state law and what is being negotiated
- Arrears can be paid by retiree since DFAS does not pay arrears

Caselaw Con't

In re Marriage of Townley, 544 P.3d 603; 30 Wash.App.2d 294; Court of Appeals of Washington Division 3 (March 7, 2024)

- Issue: The USFSPA prohibits courts from awarding military retiree's disability pay to former spouse. Does this prohibition preclude courts from incorporating into the decree an agreement made by the parties that provides for such an award?
- Look at it as contract law

Lesson - Need to fully understand what is being negotiated.
- Don't dabble in this area. Make sure you retain someone with whom you can consult to fully understand this area of law

Caselaw Con't

Rhone v. McDonough, Secretary of Veterans Affairs, 53 F.4th 656 (2022)

- The Department of Veterans Affairs is statutorily authorized to withhold disability compensation for court ordered spousal support payments and, by extension, child support

Caselaw Con't

Matter of the Marriage of Shafer, 531 P.3d; 317 Kan. 481; Supreme Court of Kansas (2023)

- Issue – When does the dormancy statute impact the awarding of military retirement and the ability to submit documents to the Plan Administrator?
 - Larimore – 52 Kan.App.2d 31 (2015) – Dormancy Statute (5 years after judgment entered becomes dormant; 2 years later becomes extinguished)
 - Matter of the Marriage of Holliday 317 Kan. 469 (2023) (companion case but dealing with KPERS)

Lesson – Dormancy Statute begins to run upon ability to obtain the retirement

- Best practice is to submit documents immediately. If servicemember remarries and then gets divorced, the former spouse may now be second in line to get share of military retirement

Caselaw Con't

- In the Matter of the Marriage of Thrailkill,
57 Kan.App.2d 244; 452 P.3d 392
 - Issue – Can the court include military retirement set aside to party in child support calculations?
 - How to take into consideration spouse's sacrifice for military service in awarding maintenance?
 - How to address modification of child support regarding disability pay and emancipation of children?
 - Can SBP be awarded (including a higher amount) and what is the timeline to apply for it?
 - Lesson – Be familiar with the federal law on issues (SBP) or retain a consultant who is knowledgeable on these issues.
 - Understand the Child Support Guidelines and review them to know what is included as to income

Caselaw Con't

Matter of the Marriage of Babin 565 Kan.App.2d 709 (2019)

- Issue – Whether the Howell case allows for a “contractual agreement” to divide military disability pay?
- Findings: Federal law preempts ordering the division of military disability benefits and the distribution of any portion of those benefits to a veteran's/retirees' former spouse
 - The sanctity of contract is not a way to avoid or escape federal preemption

Lesson – Know the law and advise your client of the possible impact of military disability benefits on both the retiree and former spouse

Question – What impact does this have on all other previous court orders and/or agreements that were entered into and approved by a District Court prior to the Howell case?

What Do These Numbers Mean?

- 10/10 - Direct Payment from Retired Pay Center
- 20/20/20 – Post/Base Privileges; ID Card; PX/BX and Commissary Privileges; Healthcare (Tricare)
 - Can lose coverage if remarry before age 55 or have an employer sponsored health care plan at their employment
- 20/20/15
 - Entitled to healthcare up to one year from date of divorce
 - One year of commissary and exchange privileges
- Continued Health Care Benefits Program (CHCBP)

What if not a 20/20/20 or 20/20/15 Spouse?

- Continued Health Care Benefits Program (CHCBP)
 - Administered by Humana Military
 - Provides qualified beneficiaries with optional healthcare for 18-36 months
 - Not Tricare but offers comparable coverage to Tricare Select Group B
 - Considered minimum essential coverage as provided for under the Affordable Care Act

Continued Health Care Benefits Program (CHCBP)

- CHCBP provides two types of coverage plans: individual or family.
- Coverage must be purchased in 90-day increments.
- **Premium for individual coverage: \$1,849 per quarter**
- Individual coverage is available to the sponsor, a former spouse who has not remarried or an adult child.
- **Premium for family coverage: \$4,621 per quarter**
- Family coverage is only available to former service members and their dependents. For family coverage, dependents cannot enroll unless the sponsor enrolls.
- When you receive medical care under CHCBP, you will be responsible for paying an annual deductible and cost-shares for covered services. These amounts are based on the sponsor's status at the time of enrollment and the type of provider seen.
- CHCBP costs and premiums are subject to annual adjustments each fiscal year.
- If you are an unremarried former spouse, for CHCBP, choose "Retired" regardless of your sponsor's status

Service Regulations Regarding Family Support

- Army
 - Army Regulation 608-99, Family Support, Child Custody and Paternity (November 13, 2020)
- Navy
 - MILPERSMAN 1754-030, Support of Family Members (April 26, 2006)
- Marine Corps
 - US Marine Corps, Order P5800.16a Marine Corps Manual for Legal Administration, Ch.15 (Dependent Support and Paternity) §15001)
- Air Force
 - AF Instruction 36-2906 ¶3.1.2, Personal Financial Responsibility (July 30, 2018)
- Coast Guard
 - US Department of Homeland Security, US Coast Guard Commandant Instrument M1600.2 Ch 2.E (October 2020)

Kansas Child Support Guidelines

- Income includes the following:
 - Base Pay
 - Basic Allowance for Housing
 - Basic Allowance for Subsistence
 - Special Duty Pay



QUESTIONS?

- Joseph A. DeWoskin
827 Armstrong Ave.
Kansas City, KS 66101
(913) 387-2359
dewoskinlawfirm@gmail.com
www.dewoskinlawfirm.com