



# Representing Veterans and Servicemembers in Family Law Matters

Military and Veteran's Law Section

Fall CLE 2024

Lubbock, Texas



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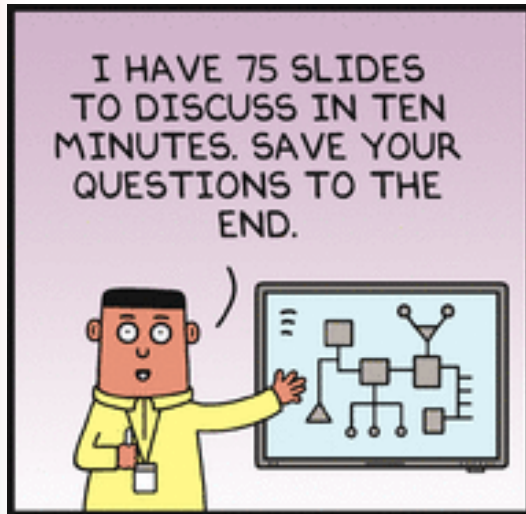
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# OVERVIEW

- Jurisdiction and Service of Process
- SCRA: Stays & Defaults
- Child Support in Texas
- Military Retirement in a Divorce
- Survivor Benefits Plan





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# **Jurisdiction & Service of Process Over Servicemembers in Family Law Matters**



# 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”
  - Not waivable
  - Overseas Children – “Sprechen Sie Deutsch?”
- Child Support – personal jurisdiction over obligor
- Military Retirement (USFSPA – 10 USC 1408)
  - Quasi-subject matter
  - Active v. Retired?
  - Consent or challenge?



# 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 21 -- FILING AND SERVING PLEADINGS AND MOTIONS
- TRCP 21a -- METHODS OF SERVICE
- TRCP 99 -- ISSUANCE AND FROM OF CITATION
- TCRP 103 -- WHO MAY SERVE
  - Certified Mail – Clerk only?
- TCRP 106a -- METHOD OF SERVICE
  - As authorized by Rule 103
  - In Person / Certified Mail



# Alternate Service



- TRCP 106(b) Methods of Service
- TRCP 109 Citation by Publication
- TRCP 109a Other Substituted Service
- Service by Email, Text, Social Media
- 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 for Service of Process

- Voluntary Acceptance/Waiver of Service
- “Baiting” to get an appearance
  - If not served or no waiver, is someone just showing up OK?





# 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>
- <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.crowforeignservices.com>-- overseas process server



# 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

# 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

# Servicemember's Civil Relief Act

§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, attachments, and garnishments

§525 Duration and term of stays

§526 Statute of limitations





# 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*.

--If you are going to default **ANYONE** a Non-Military Affidavit **MUST** be filed!!

--Penalties for making or using false affidavits

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

**\*\*So then, can you ever default a Servicemember?**

--Appointment of Attorney ad Litem

--SM made an appearance in the case and has notice





# 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*

Application: 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 if Servicemember retained attorney?)





# CALCULATING CHILD SUPPORT FOR SERVICEMEMBERS



# 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
- Clothing Allowance
- 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





# **DIVIDING MILITARY RETIRED PAY IN A DIVORCE**



# **This will not make you an expert**

- read and know the rules
- read and know the case law
- recognize the red flags
- consult with an expert





# Know Your Retirement Plan!!

- Legacy or Blended
- Active or Reserves/Guard





# “Legacy”

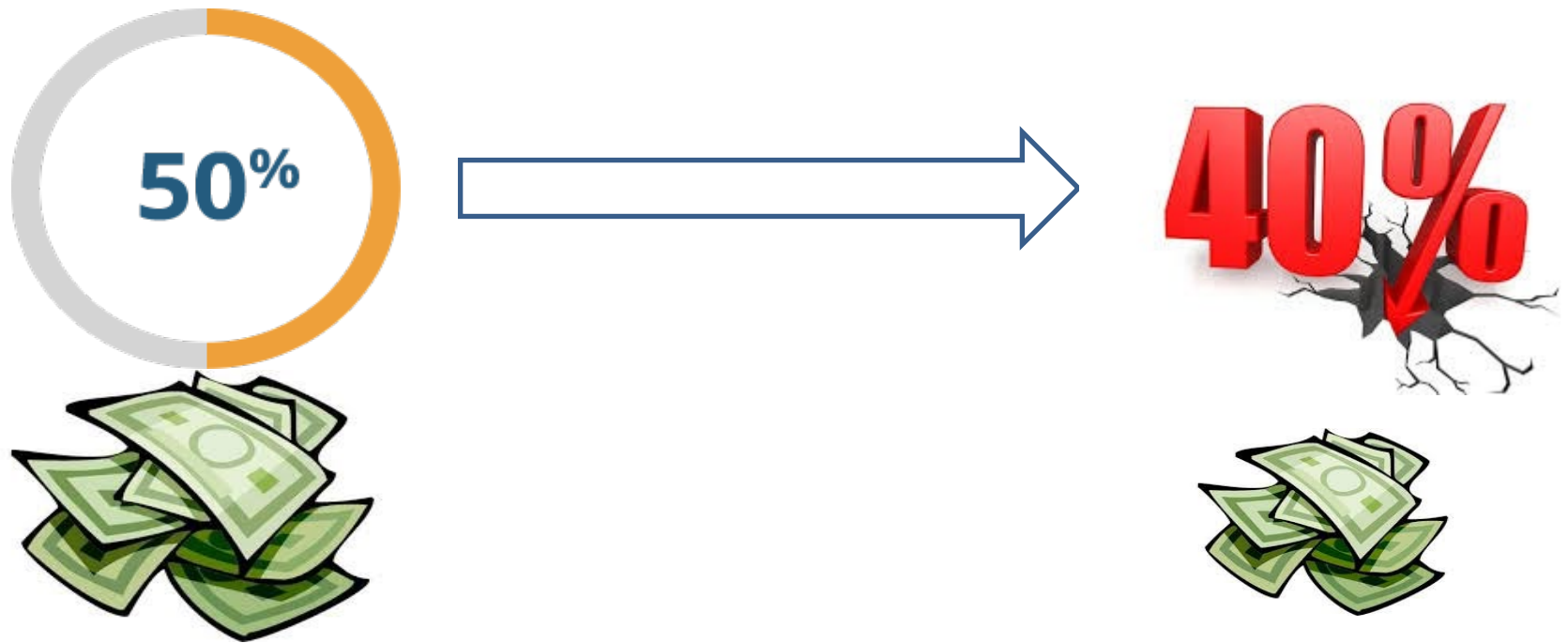
- Multiplier of 2.5%
- For those with dates of service before January 1, 2018 they should be under the Legacy System
- Choice of Legacy or Blended for some
- Ask your client!!



# “Blended”

- Multiplier of 2.0%
- 2016 NDAA
- January 1, 2018 Start Date
- Military Compensation and Retirement Modernization Commission (MCRMC)

# Difference in Legacy v. Blended: *A reduced defined benefit plan*



$0.025 \times \text{total years} \times \text{“HI-3 base pay”}$

$0.020 \times \text{total years} \times \text{“HI-3 base pay”}$



# Defining the Benefit



## ACTIVE DUTY:

Multiplier x years of service x HI-3

2.5% (or 2.0%) x years of service x HI-3

2.5% (or 2.0%) x 20 x \$4,000 = \$2,000/mo.(or \$1600)



## GUARD/RESERVE:

# points ÷ 360 = equiv. years of svc

Use same equation as above





# 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



- Clear and Concise language . . . Words matter!
  - 50% of Community Share – what is that?
  - military retired pay v. disposable retired pay
  - USFSPA v. State Laws v. Other Federal Laws/Regs
  - Not doing this may result in a need for clarification



- USFSPA/DFAS Allows Four Ways to Divide Pension



- Fixed Dollar Amount
- Formula Clause
- Percentage
- Hypothetical



Absent an agreement to something else Texas Divides it as a Hypothetical Awards as of the date of divorce



# Dividing Military Retirement



## NDAAs 2017 (Frozen Benefit Rule)

- **Applicable only to final orders which are prior to the date of a member's retirement (and entered after December 23, 2016)**
- **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.**





# Disability Benefits Effect on the Division of Retirement





# Types of Disability Pay

- VA Disability
  - VA Disability under 50% = waiver = complete offset
  - VA Disability 50% or more = CRDP = double dip
- Combat Related Special Compensation Pay
  - CRSC
  - (Jackson Case – TX)
- CH 61 Retirement





# CRDP

## Concurrent Receipt of Disability Pay



- What is it?
  - Replaces/restores retired pay waived by SM to receive VA disability compensation
  - 50% VA disability or more
- How does it affect FS's share of DRP?
  - Automatic if SM receiving 50% or more VA disability
- Effect on USFSPA direct payments to FS?
  - Replaces waived VA; increases FS entitlement





# CRSC

## Combat Related Special Compensation

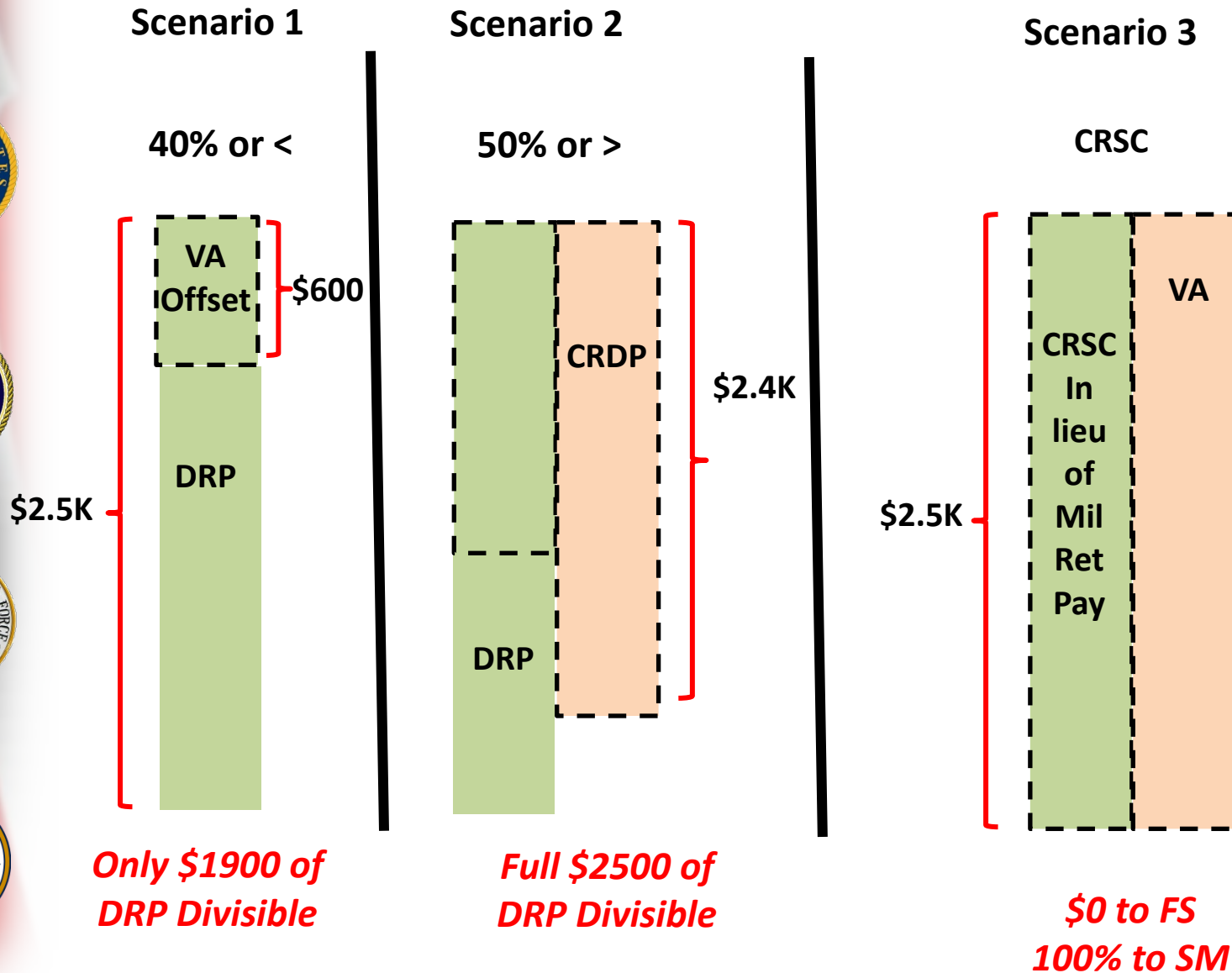


- What is it?
  - 10% VA disability or more that is combat related
  - SM must apply for and elect
  - SM can't get CRDP and CRSC
  - CRSC non-taxable
  - Effect on SM is VA + either CRDP (Retired Pay) or CRSC
  - SM must annually make election of CRDP or CRSC
- Is it covered by the USFSPA?
- How does it affect FS's share of DMRP?
- Can it be used by the SM to defeat FS's right to receive her share of DMRP?





# Why do we need to know about disability pay?



# How is the Former Spouse Protected? What About Indemnification?









# HOWELL V. HOWELL

U.S. SUPREME COURT

137 S.Ct. 1400 (2017)

- 
- 
- 
- 
- Issue = indemnification for “VA waiver”  
(SCOTUS said no) BUT . . .
    - No contractual indemnification clause
    - No prior court order for indemnification



# Howell - Ruling & Rationale



- USFSPA [Uniformed Services Former Spouses' Protection Act]\* exempted VA disability comp. from division (10 U.S.C. 1408 )



- Mansell case\*\* barred division of waived military ret. pay as marital property upon divorce (U.S. Sup. Ct. 1989)



- This case involves, in effect, division of waived mil. ret. pay = INDEMNIFICATION BARRED





# HOWELL PROGENY CASES

A slide below has been provided in your materials about several cases post-Howell that deal with a variety of issues related to the election of disability pay and the frozen benefit rule.





# REMEDIES FOR THE F.S.



- Alimony consent order
- Alimony supplement
- Present value set-off
- Unequal division of property
- Indemnification allowed: by contract
  - Agreed minimum dollar amount
  - “If H does anything which reduces W’s awarded share. of the military pension, he will promptly indemnify her as to any losses she suffers in consequence thereof.”





# TIPS FOR DRAFTING PENSION ORDERS

# Format of Order

- DFAS does not requires specific format, only specific information
- DRO, MRPDO, language in decree, etc.
- Not a QDRO





# Award Magic Language for Orders



## ACTIVE DUTY (Not retired):



“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 *high three base pay of \$3232.00* on the *date of divorce.*”





# Award Magic Language for Orders



## RESERVISTS/GUARD:



“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.*”





# Award Magic Language for Orders



**Active Duty Retired OR  
Reservist in Pay status:**



“The former spouse is awarded 45% of the disposable military retired pay of the Servicemember.”



*\*no rank, no high-3, no years of service, no points, and no date of divorce*





# Other Misc. Language in a MRPDO/MPDO/DRO/Decree

- Factual Data
- Constructive Trustee
- Income to Former Spouse (Taxes)
- Application for Direct Pay (DD Form 2293)
- RAS Turn over
- SBP







# Enforcing Military Retired Pay Orders

- DFAS' role: almost limited to none (only if their mistake after order accepted)
- Attorney's role: it's all on your shoulders
  - File a clarification (maybe)
  - File an enforcement
  - Get a judgment





# Statute of Limitations for Enforcements

- 
1. Need to have a Judgment for Arrears
  2. Texas Law
    - 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.).
- 
- 
- 



# 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.

# Survivor Benefit Plan (SBP)

- Title 10, Chapter 73, Subchapter, Sections 1447-1445
- Annuity Paid out to beneficiary when Servicemember/retiree is first to die
- Court can order SBP coverage for a former spouse
- Without it, payments to spouse/former spouse end at the retiree's death
- If declined at retirement, cannot have if divorce is after retirement



# Survivor Benefit Plan (SBP)

- Benefit = 55% of base amount (\$300 up to FULL retired pay)
- Cost (from retired pay) =
  - Active Duty: 6.5% of base amount
  - Guard/Reserve – up to about 10% of base amt
  - Pay for 30 years or age 70 (whichever is later)
- Unitary benefit = only ONE spouse (“ex or your next”)
- In a divorce: Must be in the decree or “DRO” then elected and registered with retired pay center within deadline: one year from operative order (or it is lost)
- Who pays for it?
  - Comes off the top of gross retirement pay
  - reimbursement by former spouse
  - reduce former spouse share to cover costs
- Social Security Offset after age 62





# PROCESSING FORMER SPOUSE DOCS

SEND TO DFAS:

- DD For 2293 (Direct Pay)
- DD Form 2656-10 (SBP Deemed Election)
- Certified Copies of Decree and “DRO”

NEW: DFAS has portal to upload these documents with the certified copy of decree and pension order (DRO) at the same time (can still fax or mail in) – see .pdf with electronic materials (or slides below on your own time!)





# Are We Done Yet?





Sorry there is more . . . . .

# TSP & Mid Career Bonus Pay



# Legacy Thrift Savings Plan

- It's an IRA
- Divisible: community share
- SM can open a TSP
- Uncle Sam contributes nothing
- TSP belongs to SM



# Blended

## *An enhanced TSP*

- TSP will be “issued” to SM
- Uncle Sam contributes 1% (after 60 days)
- Uncle Sam matches up to 3% (after 2 years)
- Uncle Sam matches 1/2 from 3 – 5%
- TSP belongs to SM after 2 years of service





# Blended Mid-Career Bonus ["Continuation Pay"]

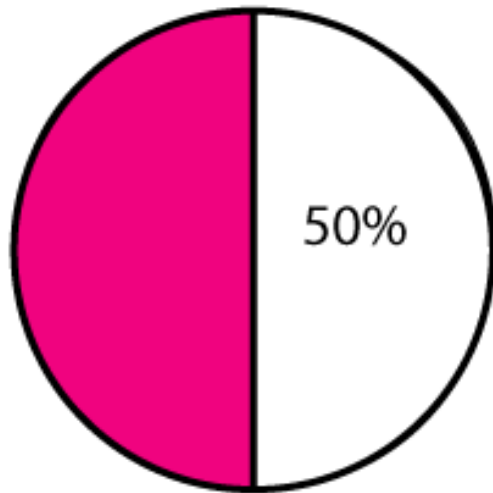
X 2.5% of base pay = minimum

X up to 13% = maximum

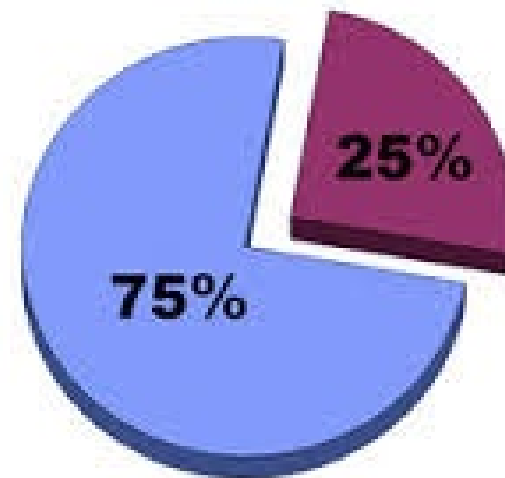


# Blended: Advance on Retired Pay

One-half



One-quarter



- Lump sum in exchange for a reduced retirement
- Full retirement restored at age 67
- Not yet being litigated . . . Why?



# Thank You!!

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# Applying for Direct Pay and SBP for a Former Spouse through the new DFAS Portal

Dawn M. Laubach Laubach Law Office PLLC

[laubachlegal@hotmail.com](mailto:laubachlegal@hotmail.com)

Go to: <https://corpweb1.dfas.mil/askDFAS/custMain.do?mid=5160>

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Category: Garnishment

Subcategory: All Subcategories

No.	Category	Subcategory	Frequently Asked Question	Viewed	Viewer Rating
O1005	Garnishment	Garnishment Inquiry	<a href="#">Child Support and Alimony</a>	41,015	★★★★★
O1002	Garnishment	Garnishment Inquiry	<a href="#">Child Support and Alimony Payments</a>	20,215	★★★★★
O1009	Garnishment	Garnishment Inquiry	<a href="#">How to Stop Child Support</a>	17,223	★★★★★
O1023	Garnishment	Garnishment Inquiry	<a href="#">Uniformed Services Former Spouses Protection Act-Pay Information</a>	15,655	★★★★★
O1027	Garnishment	Garnishment Inquiry	<a href="#">Uniformed Services Former Spouses Protection Act</a>	13,822	★★★★★
O1001	Garnishment	Garnishment Inquiry	<a href="#">Child Support and Alimony</a>	12,755	★★★★★
O1018	Garnishment	Garnishment Inquiry	<a href="#">Uniformed Services Former Spouses Protection Act</a>	12,327	★★★★★
O1026	Garnishment	Garnishment Inquiry	<a href="#">Uniformed Services Former Spouses Protection Act</a>	11,488	★★★★★
O1056	Garnishment	Garnishment Inquiry	<a href="#">Forms</a>	10,888	★★★★★



## Defense Finance and Accounting Service

Providing payment services of the U.S. Department of Defense

1-888-332-7411

myPay



### GARNISHMENT LAW

FAQs Submit A Ticket

- Step 1: Category selected
- Step 2: Select a Subcategory

#### Categories

Garnishment

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##### By using this Information system consent to the following conditions:

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## Defense Finance and Accounting Service

Providing payment services of the U.S. Department of Defense  
1-888-332-7411



### GARNISHMENT LAW DIRECTORATE -- ONLINE CUSTOMER SERVICE

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- ✓ Step 1: Category selected is: **Garnishment**
- Step 2: Select a Subcategory by clicking the >> button next to the subcategory name.

Forms and Document Submission - to submit application forms and supporting court order documentation to the Garnishment Law Directorate

Categories	Subcategories
>> <b>Garnishment</b>	>> Court Order Request
	>> <b>Form and Document Submission</b>
	>> Garnishment Inquiry



[AskDFAS Welcome Center](#)  
[www.dfas.mil](#)  
[FOIA and Privacy Act](#)  
[Legislative Affairs](#)

[Blue Book](#)  
[Web Policies](#)  
[USA.gov](#)  
[Defense Sector CIP](#)

[EEO/No Fear Act](#)  
[Accessibility/Section 508](#)





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**GARNISHMENT LAW DIRECTORATE -- ONLINE CUSTOMER SERVICE**

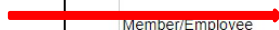
[FAQs](#) [Submit A Ticket](#)

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Fill in your name and information so you get the email showing it is being processed



Put the servicemembers name and SSN as the member/employee



**Your Information** [Change Category/Sub-Category selection](#)

Category: Garnishment  
 Subcategory: Form and Document Submission

Name: First\*:  Middle\*:  Last\*:

**To ensure spam blocker does not block receipt of responses regarding your ticket, please add [dfas.cleveland-oh.zte.mbx.web-askdfas@mail.mil](mailto:dfas.cleveland-oh.zte.mbx.web-askdfas@mail.mil) to your safe senders email list before submitting your ticket.**

Email\*:  Re-enter Email\*:

Additional Email: If you would like this information and responses sent to additional email addresses, enter them here. Separate multiple addresses with the semi-colon (;)

Passcode\*: Create a passcode for this ticket to view information and responses. Passcodes must be a minimum of 15 characters and contain at least one lowercase letter, one uppercase letter, one number, and one special character. Passcodes cannot contain your name or email address. Safeguard your passcode for future use.

Name of Form\*:

Complete the fields below and use the Attachment Section to upload your completed and signed form.  
 -Please read before attaching your documentation below.  
 Ensure each uploaded document is legible and complete before submitting.  
 Please consolidate your documentation within the fewest attachments possible.  
 If you are submitting photographs of your documentation, do not upload each one as a separate attachment. Please combine them into one document and then upload the full document below.  
 The attachment limitation for this ticket is 8. Please do not submit multiple tickets for the same request.  
 Following the above guidance will help to ensure your request is received and processed in the timeliest manner.  
 To review what documentation is required with your form, visit [www.dfas.mil/garnishment/](http://www.dfas.mil/garnishment/).

Member/Employee Name\*:   
 Please provide the member/employee name.

Member/Employee SSN\*:   
 Your request will ONLY be processed if you have entered a valid social security number in 111993333 format.

Question\*:

Question\*:

**Document Package** ?

No file chosen

Combine your documents and forms into one file and upload the file to your ticket. If you have chosen to include a file, you must click the Upload File button before pressing the submit button to make sure they get included.

Submits your item to the Garnishment Law Directorate.

Cancels your inquiry and returns you back to the FAQ Page.

PRIVACY ACT STATEMENT: Disclosure of your contact and other information is voluntary. It is solicited for the sole purpose of responding to your inquiry or request. If it is not provided, we may not be able to respond.

Whether you are uploading the Mil Ret Order, decree and DD Form 2293 for direct pay and/or making the SBP deemed election with the DD Form 2656-10, you need to combine all documents into one pdf for uploading. We send a cover letter with documents. You do not need to upload Mil Ret and SBP docs separately.



# Sample Confirmation of Submission

Online submission received and ticket number assigned

## GARNISHMENT LAW DIRECTORATE -- ONLINE CUSTOMER SERVICE

Your submission was received and will be assigned for immediate response. Response times vary based on the volume and complexity of the item submitted.  
Print out the following as a record of your submission.

### Test Loc

#### Your Information

Ticket Number: 20240822 [REDACTED]  
Access Link: [https://corpweb1.dfas.mil/askDFAS/tk?c=8a830d15-fc8f-42f9-af4c-\[REDACTED\]](https://corpweb1.dfas.mil/askDFAS/tk?c=8a830d15-fc8f-42f9-af4c-[REDACTED])  
Category: Garnishment  
Sub Category: Form and Document Submission  
First: Dawn  
Middle: M.  
Last: Laubach  
Email: laubachlegal@hotmail.com  
Additional Email: laubachlegal@hotmail.com  
Name of Form: Military Retirement Benefits [REDACTED]  
Member/Employee Name: [REDACTED]  
Member/Employee SSN: Withheld for your protection.  
Question: Thank you!

File Name	Status
Ltr_Docs to DFAS for Mil Ret Processing [REDACTED]-combined.pdf	Attachment Uploaded

#### Important Ticket Information

In order to view future correspondence on your ticket, you will need to use the link provided as well as the passcode you created for this ticket. Please write down or remember this information.

**Your Ticket Number**  
20240822 [REDACTED]

**Your Access Link**  
[https://corpweb1.dfas.mil/askDFAS/c=8a830d15-fc8f-42f9-af4c-\[REDACTED\]](https://corpweb1.dfas.mil/askDFAS/c=8a830d15-fc8f-42f9-af4c-[REDACTED])



AskDFAS Welcome Center  
[www.dfas.mil](http://www.dfas.mil)  
FOIA and Privacy Act  
Legislative Affairs

Blue Book  
Web Policies  
USA.gov  
Defense Sector CIP

EEO/No Fear Act  
Accessibility/Section 508

# Automatic Email Receipt of Upload

Sent directly from  
DFAS paralegal  
who is processing  
documents

Garnishment Law Directorate received your inquiry. #20240822 [REDACTED].

Garnishment Law Directorate <dfas.cleveland-oh.zte.mbx.web-askdfas@mail.mil>

Thu 8/22/2024 11:57 AM

To: laubachlegal@hotmail.com <laubachlegal@hotmail.com>; laubachlegal@hotmail.com <laubachlegal@hotmail.com>

Dear Customer,

Thank you for your submission to Garnishment Law Directorate.

Your Garnishment Law Directorate ticket number is: 20240822 [REDACTED]. Please reference this number in any communication about your inquiry.

You will receive a response to your inquiry in a separate email within the next 5-7 business days.

Response times vary based on current volume and complexity of the item submitted.

If you wish to inquire about the status of your ticket, you may contact the Cleveland Customer Care Center at 1-888-332-7411, option 6.

We look forward to serving you,  
Garnishment Law Directorate Customer Service

This e-mail is generated from an unattended email server. Replies will not be addressed. Do not Reply to this email.

# HOWELL PROGENY CASES – Page 1

## HOWELL PROGENY CHART

<u>State</u>	<u>Follows Howell?</u>	<u>Court</u>	<u>Case</u>	<u>Reasoning</u>
Alabama	Y	Alabama Court of Appeals	Brown v. Brown, 260 So.3d 851 (2018)	TDRL waived for VA Disability, under federal law not divisible with the spouse
Alabama	Y	Alabama Court of Appeals	Williams v. Burks, 2021 Ala. Civ. App. LEXIS 118 (Nov 5 2021)	Not a pension case - but a VA disability case. H appeals from contempt finding from order awarding W 40% of his VA disability pay. "It is clear that the trial court lacked the authority to award the former wife any portion of the VA disability benefits" at *16 Wife argues res judicata - court rejected it saying order to divide VA benefits is VOID and violates 38 USC 5301 (a)(1) cannot enforce by "legal or equitable process"
Alabama		US Ct. of Appeals for 11th Circuit (Appeal out of Alabama)	Tarver v. Tarver, No. 23-13679, 2022 U.S. App. LEXIS 26469 (11th Cir. Sept. 22, 2022)	H agree to divide VA disability payments with W in settlement agreement which was incorp. Into div. decree in 2012. Since then, H refused to pay citing Howell sayin git is void and unenforceable. Citing <i>Foster</i> and <i>Williams v. Burks</i> to show competing interpretations exist, Ct references res judicata. Ct refused to apply Rooker-Feldman doctrine to review and reject the state court orders requiring him to pay half of his VA disability. Ct. notes Ala. CT repeatedly rejected H's arguments.
Alabama	Expands on	Alabama Court of Appeals	Colafrancesco v. Colafrancesco, 2022 Ala. Civ. App. LEXIS 14 (2022)	Alimony and CRSC case, because CRSC is disability "trial court could not even consider a veteran's disability benefits received in lieu of military retirement benefits when awarding alimony." citing <i>Ex Parte Billeck</i> , 777 So.2d 105 (Ala. 2000) Because the record establishes that the husband's veteran's disability benefits cannot be considered "disposable retired pay," the trial court lacked the authority to consider any portion of those benefits in determining the alimony award. **KJH note - seems to wrongly conflate DRP with income. DRP is divisibility, not income.
Alaska	N - contract	Alaska Supreme Court	Jones v. Jones, 2022 Alas. LEXIS 25 (2022)	Servicemember agreed to it, and Howell does not "preclude one spouse from agreeing to indemnify the other as part of a negotiated property settlement" Howell doesn't overrule contract law
Alaska	N - contract	Alaska Supreme Court	Gross v. Wilson, 424 P.3d 390 (2018)	Coast Guard case; SM agreed he would pay 50% of ret. Pay and VA disability in 2014; Court not precluded from enforcing an agreement - Howell doesn't overrule contract law; SM had no procedural basis to challenge an order, even if award of VA disability was erroneous, it was not void. trial Ct's order enforcing settlement agreement affirmed by SupCt.
Alaska	Y	Alaska Supreme Court	Jordan v. Jordan, 480 P.3d 626 (2021)	Superior Court erred in offsetting nondivisible disability pay 'to the dollar and to the penny' in the property division to W While unequal distribution to W justified, cannot simply award half VA disability via this method

## HOWELL PROGENY CASES – Page 2

Alaska		Alaska Supreme Court <i>Guerrero v. Guerrero</i> , 362 P.3d 432 (Alaska 2015)	<p>H&amp;W agreed that H would allocate half of his military retirement benefits to W, but the superior court concluded that none of the H's military benefits were disposable retired pay. The W challenged that determination, arguing in part that the CRDP the husband received was divisible. But SupCt rejected that argument, clarifying: "CRDP does not change the nature of [the husband]'s Chapter 61 retirement benefit. H's benefits come from two sources — Chapter 61 disability retirement and VA disability payments. Neither source is divisible upon divorce." Yet, SupCt determined it was "an abuse of discretion to refuse to reopen the property settlement agreement and conduct a full equitable division analysis." Case was remanded, noting that the parties' "financial conditions," including receipt of military disability retirement benefits, "must be considered when equitably dividing the marital estate and when deciding whether to require alimony"; but also cautioned against "simply shift[ing] an amount of property equivalent to the . . . retirement pay from the military spouse's side of the ledger to the other spouse's side."</p>
Arizona	Y	Arizona Court of Appeals <i>Chaidez v. Grant</i> , 2022 Ariz. App. Lexis 45	<p>AZ decree awards % of ret pay, and reserves jurisdiction; Ct ordered SM to pay W's estate after death - not permissible; SM ret. Ch61 disability, trial court did not consider DRP and disability, vacated and remanded to divide DRP only.</p>
California	Y	California Court of Appeals <i>In re Marriage of Cassinelli</i> , 20 Cal. App. 5th 1267 (2018)	<p>SM rec'vd VA disability and CRSC. Trial court ordered alimony to make up for lost retired pay; Appellate court held, "because the judgment dividing the community property was long since final, the trial court could not give [the former spouse] any remedy for the loss of her community property interest in the retired pay."          Fed law prohibited compensating ex W in any way - spousal suppt or otherwise, however could modify spousal suppt, H's income not exempt from spousal suppt</p>