Introduction: Silent Partner is a lawyer-to-lawyer resource for military legal assistance attorneys and civilian lawyers, published by the Military Committee of the American Bar Association’s Family Law Section. Please send any comments, corrections and suggestions to the address at the end of this Silent Partner. There are many Silent Partner infoletters on military pension division, the survivor Benefit Plan and other aspects of military divorce. Just go to www.abanet.org/family/military (the website of the above committee) or www.nclamp.gov (the website of the military committee, N.C. State Bar).

Tip #1 – Where Do I Start?

Retired pay orders for the Army, Navy, Air Force, Marine Corps, as well as the National Guard and Reserves, are processed by the Defense Finance and Accounting Service (DFAS), located in Cleveland, Ohio. DFAS has numerous lawyers and paralegals reviewing the many decrees subpoenas and court orders which arrive there every day. There is a rejection rate of over 30% for military pension division orders.

Pension orders for members of the U.S. Coast Guard and Coast Guard Reserve are sent to the USCG Pay and Personnel Center (http://www.uscg.mil/ppc/), located in Topeka, Kansas. Orders for the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration are also serviced by the Coast Guard PPC.

The two basic issues in the division of retirement benefits are “pension share” and the survivor annuity. These tips tell how to write and get approved an order for division of military retired pay as property, and how to obtain coverage under the Survivor Benefit Plan. The title “retired pay center” will be used to refer to the above two offices which process applications for a division of uniformed services retired pay under USFSPA, the Uniformed Services Former Spouses’ Protection Act.1 Note that USFSPA refers to the retired pay center as the “designated agent.”2

Tip #2 – Know Your Resources.

Read closely the provisions of 10 U.S.C. 1408 to understand what the law requires for military pension division. The SBP (Survivor Benefit Plan) statute is found at 10 U.S.C. 1447 et. seq.


The DFAS website is www.dfas.mil, and the fact sheets and application forms needed are at the “Retired Military and Annuities” tab. At the end of Chapter 29 of Vol. 7b, DoDFMR, you’ll find a sample military pension order (“Figure 1”). The practitioner can import that language into an order for pension division. Read this order closely. If you vary from the language recommended here, you’ll probably have

your pension order rejected. Don’t make the mistake of thinking that you can write it up better than the folks at DFAS who are going to be processing the order; you probably can’t. And if your order is rejected, you’ll have to explain to your client why the payments are still not flowing, or the legal bill keeps going up, or you still have not finished with his or her case, although you’re “trying really hard” to do so!

Note that there are two significant omissions in the sample order. First, it is silent on SBP, perhaps because the sample order was prepared by the Garnishment Operations office of DFAS in Cleveland, Ohio; SBP is managed through the DFAS office in Indianapolis, which is called “Retired and Annuitant Pay.” The second omission is indemnification in the event of an election of disability pay that reduces disposable retired pay. This omission is due to the fact that DFAS is not responsible for reimbursements due to disability pay reductions. That is the responsibility of the retiree. Thus it is not something that a DFAS model order needs to contain, but it is something which the attorney for the FS certainly needs to consider. A better order, addressing both of these issues, is referenced at Tip #10 below.

Be sure to include the Social Security Number (SSN) of the servicemember (SM) or retiree in all correspondence and phone calls with the retired pay center. Providing this will ensure a more rapid response. Without the SSN, documents will be rejected and inquiries will be unanswered.

Tip #3 – Use the Right Document.

A separation agreement or property settlement, standing alone, is not the way to accomplish military pension division when the nonmilitary spouse wants to receive direct pension payments from the retired pay center. USFSPA only allows direct pension payments pursuant to a “final decree of divorce, dissolution, annulment, or legal separation issued by a court” or a property settlement that is ratified or approved by the court and issued incident to such a final decree.4 You can either:

- Prepare a separate military pension division order, judgment, or decree to submit to the court at the appropriate time, entered incident to the divorce, such as when the divorce occurs, or when the hearing on property division takes place.

- In the alternative, prepare a separation agreement or property settlement which can then be incorporated or merged into the decree of dissolution or divorce.

Tip #4 – Can You Get Direct Payments from the Retired Pay Center?

A pension division order can only be used for direct payments if a unique jurisdictional test is met. Military pension division is allowed only when the retiree/military member:

- is domiciled in the state in which the suit for the divorce or property division occurs; or

- resides in the state in which the lawsuit occurs (other than because of military assignment); or

- consents to the jurisdiction of the court in which the lawsuit occurs.5

The order must state the jurisdictional basis for dividing military retired pay.6 For more detailed information on these jurisdictional tests, see the SILENT PARTNER info-letter, Military Pension Division: Scouting the Terrain, found at www.nclamp.gov, the website of the North Carolina State Bar’s military committee, or at www.abanet.org/family/military, the website of the military committee of the ABA Section of Family Law.

In addition, in property division cases involving the retired pay center’s division of military retired pay incident to a divorce or separation, the parties must be married for at least 10 years during which time the military member performed at least 10 years of creditable military service.7 Without this, the retired pay center cannot honor an application for the direct payment of any court-ordered division of retired military pay

6 DoDFMR § 290605.
as property. The pension is still divisible, but the former spouse must look to the retiree for payments, not the
retired pay center.

The Servicemembers Civil Relief Act (SCRA)\(^8\) offers protection for military members who are on
active duty at the time of the divorce. USFSPA requires a statement in the pension division order for military
pension division that the military member’s rights pursuant to the SCRA have been observed.\(^9\) Although the
SCRA does not apply in cases where the member is retired or is not on active duty at the time the decree was
entered, USFSPA does not make that distinction; it requires such a statement in all cases.

The pension order or divorce decree may be submitted at any time after it is entered.\(^10\) One need not
wait until the SM has already applied for retirement or is in pay status. If the SM is not yet in pay status
when the order is tendered to the retired pay center, a conditional approval will be made, subject to final
approval at the time the individual actually starts to receive retired pay.\(^11\)

At the time of final approval, the retired pay center will notify the SM that payments will start not
later than 90 days after the service date of the approved application or the start of retired pay, whichever is
later.\(^12\) The former spouse (FS) also gets an approval notice.\(^13\) When the court order divides military retired
pay as property, no more than 50% of disposable retired pay (DRP) may be deducted.\(^14\) The retiree remains
liable for any amount still owing.\(^15\) In cases where there is an application for the direct payment of court-
ordered division of military retired pay and a garnishment issued pursuant to 42 U.S.C. § 659 (child or spousal
support), the retired pay center may deduct up to 65% of the military member’s disposable earnings.\(^16\)

**Tip #5 – Use the Right Language.**

Even if it were incorporated into a court order or a divorce decree, the separation agreement or
property settlement must contain all the terms required for court orders to be honored by the retired pay
center. You should state the following:

- a. The names and addresses of the parties, as well as their SSN’s (although the latter identifier may be
  omitted if that is required by state law, local rules or prudent practice, since the application
document, DD Form 2293,\(^17\) requires the SSN);

- b. The years of marriage and of military service;

- c. The military member’s grade or rank;

- d. A statement that the SCRA rights of the member have been observed;

- e. Jurisdictional findings (domicile, consent, or residence) under 10 U.S.C. 1408 (c)(4);

- f. A statement that the FS will be paid at his/her address as shown therein; and

- g. A statement as to what the retired pay center will pay the spouse (see “Know What You Want”
  below).

Payments are made once a month, starting no later than 90 days after service of the decree on DFAS

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\(^8\) Chapter 50, Title 50, U.S. Code.
\(^10\) DoDFMR § 290404.
\(^11\) DoDFMR § 290405.
\(^12\) 10 U.S.C. § 1408(d)(1).
\(^13\) DoDFMR § 290501.
\(^14\) The award is construed as dividing “disposable retired pay” regardless of the language used. DoDFMR §
  290601.D.
\(^15\) 10 U.S.C. § 1408(e)(6).
\(^16\) DoDFMR § 290901(b).
\(^17\) DoDFMR § 290401.
or the start of retired pay, whichever is later. The payments end at the death of the retiree or spouse, whichever occurs first. Payments are prospective only; no arrears are paid through the retired pay center. The USFSPA does not provide for garnishment of payments missed prior to the approval of the application by the retired pay center. It also is not responsible for payments missed due to transmission to an incorrect or out-of-date address or bank account number.

**Tip #6 – Know What You Want.**

The order may award a percentage or a fixed dollar amount to the former spouse of the military member. Set out below are examples of the phrasing for these and other types of pension-division clauses.

A percentage clause might state: “Wife is granted 43% of Husband’s military retired pay.” Alternatively, a “fixed dollar amount” clause could read: “Wife is awarded $550 per month as military pension division.” Every allowable clause automatically provides for cost-of-living adjustments (COLAs) except for the “fixed dollar amount” clause. Attempting to add a COLA to a fixed dollar clause will result in rejection of the entire order.

The rules also allow awards that are not percentages or fixed dollar amounts. The retired pay center will honor a court award that is expressed as a formula or a hypothetical. These are usually used if the SM is still serving.

A formula is an award expressed as a ratio. For example, the order could state: “Wife shall receive 50% of the Husband’s disposable retired pay times a fraction, the numerator being the months of marital pension service, and the denominator being the total months of service by Husband.” The order must then provide the numerator, which is usually the months of marriage during which time the member performed creditable military service. The retired pay center cannot guess or infer what the court (or the parties) have determined to be the months of service during marriage (the numerator); however, the designated agent can provide the total months of service (the denominator). Note that if the court also provides the total months of service, DFAS will honor that number regardless of its accuracy.

A hypothetical clause is the most difficult one to draft. It involves an award based on a rank or status which is different from that which exists when the SM retires. For example, the order might say: “Wife is granted 50% of what an Army staff sergeant (E-6) would receive if he were to retire with over 18 years of military service and ‘High-3’ pay of $____ per month.” Since there’s no table that shows this type of pay, DFAS would calculate the hypothetical pay amount and compute a ratio to the actual retired pay in order to calculate the amount to which the wife in this example should receive. Detailed information on hypothetical clauses is found in the SILENT PARTNER, “Guidance for Lawyers: Military Pension Division,” found at www.nclamp.gov, the website of the North Carolina State Bar’s military committee, or at www.abanet.org/family/military, the website of the military committee of the ABA Section of Family Law.

A COLA will automatically be awarded with a hypothetical clause. Finally, be sure to include the rank and years of service of the member when submitting a hypothetical award, as well as the “High-3 pay” of the servicemember. If there are variables which are missing, the retired pay center will not supply them;

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20 DoDFMR § 290304.
21 DoDFMR § 290601.C.
22 DoDFMR § 290601.C.
23 DoDFMR § 290601.E.
24 DoDFMR § 290211.
25 DoDFMR § 290213 and 290608.
26 For members entering military service on or after September 8, 1980, retired pay is calculated using the average of the member’s highest 36 months of basic pay at retirement, also known as “High-3.” See Chapter 3 of the DoDFMR, § 030101.A.2.
the order will be rejected.

Guard/Reserve pension clauses deserve separate treatment. When a Guard or Reserve pension is involved and the member has not stopped drilling and put in for retirement, a “formula clause” is typically used, since the final retired pay isn’t known and the total service creditable for retirement is also unknown. In a Guard/Reserve case involving a formula clause, you must specify division according to retirement points.27 The usual language refers to points earned during marriage divided by total points during the member’s career.

If a formula clause is not used for a still-drilling Reserve or Guard member, then this “points over points” rule does not apply. For example, the retired pay center will honor a percentage award for any Guard or Reserve servicemember with language such as “John will pay Mary 35% of his Army National Guard retired pay.” It will also accept any decree in which all the variables are filled in by the court.

Tip #7 – A Helpful Checklist for Pension Division.

“One size fits all” definitely doesn’t apply to military pension division orders. A good practitioner will check and re-check the pension division order to be sure it complies with the regulations and the statute, accomplishes the needs of the client, makes sense, and will be honored by the retired pay center. In addition to the tips shown above, here is a checklist used at DFAS for pension division orders:

**DFAS CHECKLIST FOR MILITARY PENSION DIVISION ORDERS**

<table>
<thead>
<tr>
<th>✔ General Validation Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the member active duty, reserve/guard, or retired?</td>
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<tr>
<td>If retired, what is the member’s retirement date?</td>
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<tr>
<td>Is the member receiving temporary or permanent disability retired pay?</td>
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<tr>
<td>Was a final decree of divorce, dissolution, annulment or legal separation submitted?</td>
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<tr>
<td>Did the clerk of court certify the order?</td>
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<tr>
<td>What is the date of divorce?</td>
</tr>
<tr>
<td>Has the appeal time expired?</td>
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<tr>
<td>Was a fully completed DD Form 2293 submitted?</td>
</tr>
<tr>
<td>Are any additional documents required (such as a marriage certificate), or is the order/application invalid for any reason?</td>
</tr>
<tr>
<td>Were the member's rights under the Servicemembers Civil Relief Act observed?</td>
</tr>
<tr>
<td>What is the member’s PEBD (pay entry base date)?</td>
</tr>
<tr>
<td>Was the marriage date provided? (If there is a 10/10 overlap between years of marriage and military service, the system will automatically calculate whether the 10 year overlap of marriage and service requirement was met).</td>
</tr>
<tr>
<td>Does the court have 10 USC 1408 (c)(4) jurisdiction over the member -- by reason of residence (not due to military assignment), domicile or consent?</td>
</tr>
<tr>
<td>Does the order provide for the payment of a percentage, fixed dollar amount, formula, or hypothetical award?</td>
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<tr>
<td>If the division of retired pay is based on a formula (i.e., marital fraction), does the order provide the numerator? For Reserve/Guard members, is the formula expressed in reserve retirement points?</td>
</tr>
<tr>
<td>If the division of retired pay is based on a hypothetical retired pay award, is the award language valid? Are all the variables provided?</td>
</tr>
<tr>
<td><strong>A. For active duty members entering service before September 8, 1980, the variables are:</strong></td>
</tr>
<tr>
<td>Percentage awarded.</td>
</tr>
<tr>
<td>Rank for hypothetical retired pay calculation.</td>
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<tr>
<td>Number of years of service for hypothetical retired pay calculation.</td>
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<tr>
<td>Hypothetical retirement date.</td>
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<tr>
<td><strong>-OR-</strong></td>
</tr>
<tr>
<td>Percentage awarded.</td>
</tr>
<tr>
<td>Hypothetical retired pay base (base pay figure to be used in hypothetical retired pay calculation).</td>
</tr>
<tr>
<td>Number of years of service for hypothetical retired pay calculation.</td>
</tr>
</tbody>
</table>

27 DoDFMR § 290211.B.
B. For active duty members entering service on or after September 8, 1980 (“high 36” retirees):

1. Percentage awarded.
Hypothetical retired pay base (base pay figure to be used in retired pay calculation).
Number of years of service for hypothetical retired pay calculation.

C. For Reserve/Guard members:
Percentage awarded.
Rank for hypothetical retired pay calculation.
Number of reserve retirement points for hypothetical retired pay calculation.
Number of years of service for basic pay to be used in hypothetical retired pay calculation.
Hypothetical date of eligibility to receive retired pay.

Tip #8 – Don’t Forget the Survivor Benefit Plan.

SBP (the Survivor Benefit Plan) is an essential tool in divorce planning for the former spouse. It provides an annuity of 55% of the base amount chosen for the rest of the live of the former spouse, so long as she does not remarry before age 55. Divorce ends SBP coverage unless the court orders “former-spouse coverage” and the parties make a timely election with the retired pay center.

The retired pay center cannot apportion the SBP premium between the parties; the premium must be deducted “off the top” before arriving at “disposable retired pay.”\(^{28}\) DFAS resources on this topic are found at the DFAS website, www.dfas.mil, under the “Provide for Loved Ones” tab; look for “Survivor Benefit Plan” or “Reserve Component Survivor Benefit Plan.” The checklist below will help the practitioner to understand SBP and the cost and benefits of coverage for the non-military spouse.

SBP CHECKLIST

<table>
<thead>
<tr>
<th>✓</th>
<th>Action or issue</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBP is a unitary benefit, cannot be divided between current spouse and former spouse.</td>
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<tr>
<td>SBP benefit payments equal 55% of the selected base amount, which can be $300 or above.</td>
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<tr>
<td>If representing the nonmilitary spouse and survivor annuity is desired, be sure order requires member/retiree to elect former spouse coverage, with full retired pay as base amount.</td>
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<td></td>
</tr>
<tr>
<td>If representing the member/retiree and SBP coverage for the FS is not desired, make sure that the base amount selected yields about the same death benefit as the lifetime benefit, so that the FS doesn’t profit by retiree’s death. Some people call this a “mirror award.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If representing the member/retiree, try to negotiate a reduction of the FS’s share of the military pension to reflect the additional cost of the SBP premium, which is taken out of the retired pay.</td>
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<td></td>
</tr>
</tbody>
</table>

\(^{28}\) DoDFMR § 290610. “Disposable retired pay” is defined at 10 U.S.C. § 1408 (a)(4) and at DoDFMR § 290701.
If representing the member/retiree, ask the court to value the SBP, present evidence on this, and then argue that the present value must be placed on the FS’s side of the “property division ledger”

This may require hiring a CPA, economist or actuary.

When member/retiree is to submit SBP election to DFAS, make sure this is done within one year of divorce. Enclose divorce decree and SBP application form titled Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage (DD Form 2656-1)

When spouse/former spouse applies, be sure to enclose copy of divorce decree that includes language about SBP coverage and Survivor Benefit Plan Request for Deemed Election (DD Form 2656-10).

By federal law, the deemed election request must be received within one year of the order that requires SBP.

Above one-year deadlines are mandated by statute.

If above deadlines are exceeded, apply to the appropriate Board for the Correction of Military Records for relief

SBP is reduced by Dependency and Indemnity Compensation in certain circumstances.

For information, go to https://www.va.gov/survivors/faqs.asp and Question 8, “What is the SBP/DIC offset?” or to https://www.va.gov/survivors/faqs.asp#FAQ8

Tip #9 – Where and How to Serve the Order.

Addresses for service are found on the application form, DD 2293. Note that the decree must be certified by the clerk of court. The spouse or former spouse must sign the form, and the documents to be included are a certified copy of the order and divorce judgment (if separate order). DD Form 2293 can be obtained from the DFAS website, or from any internet search engine. Anyone may serve the completed application. While you should ensure delivery by sending the documents by certified mail, return receipt requested, this is not a requirement.

Tip #10 – Suggested Military Pension Division Order Clauses

For a set of model clauses to use in a military pension division order, see the example below. While this sample order is not perfect, and it’s not for every case, it will help with most military pension division cases in most states. It will NOT suffice for those few states (e.g., Texas, Florida, Kentucky, Tennessee and Oklahoma) which require an order fixing the benefit to be divided as of the date of divorce, filing or separation, etc. It should only be used in consultation with an expert in this area or after extensive review of the rules, regulations, statutes and state cases in regard to division of the pension, allocation of SBP, indemnification and other matters which are important to the client.

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The SILENT PARTNER series of info-letters is prepared by Mark E. Sullivan (COL, USA – Ret.), a family law attorney in Raleigh, N.C.. For comments or suggested changes, contact him at mark.sullivan@ncfamilylaw.com; or 919-832-8507.
MILITARY PENSION DIVISION ORDER

THIS CAUSE came before the undersigned judge upon Plaintiff’s claim for distribution of Defendant’s military retirement benefits. The Plaintiff was represented by [Plaintiff’s attorney], and the Defendant was represented by [Defendant’s attorney]. [if entered as a consent order, add next sentence]
The parties agree to the entry of the following order to assign to Plaintiff a portion of those benefits. The court makes the following:

FINDINGS OF FACT

1. Plaintiff is a resident of [county], [state]. Defendant is a resident of [county], [state]. The parties were married on [date]. They were separated on [date]. They were divorced in a judgment filed on [date].

2. Plaintiff’s address is [address]. Her Social Security number is xxx-xx-_____; the full SSN will be shown on DD Form 2293, which accompanies the court’s order when tendered to DFAS (Defense Finance and Accounting Service) for enforcement through garnishment. Her date of birth is [date].

Note: DFAS administers orders for the Army, Navy, Air Force and Marine Corps. Pension orders for the Coast Guard and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration are handled by the Coast Guard’s Pay and Personnel Center in Topeka, Kansas. Since the majority of military retired pay orders are submitted to DFAS, that agency is used throughout this order; when necessary, replace DFAS with “the retired pay center” or “the Coast Guard Pay and Personnel Center.”

3. Defendant’s address is [address]. His Social Security number is xxx -xx-_____; likewise the full SSN will be found on DD Form 2293. His date of birth is [date].

4. The marital portion of the uniformed services retired pay of Defendant (hereafter military pension or retired pay) is subject to marital property division. Plaintiff is entitled to a share of Defendant’s military retirement benefits, as set out in the Decree below. Plaintiff’s entitlement to retired pay accrues upon the retirement of Defendant. The remaining portion of Defendant’s military retired pay is the sole and separate property of Defendant. Note: Replace “marital” with “community” when the order is for a state which recognizes community property.

5. [Selection A: if retired, use the following - -] The Defendant retired with the rank of [state rank] in the [here state branch of service, such as “U.S. Air Force” or “Utah Air National Guard”] and is currently receiving [state amount of retired pay and any deductions, such as SBP premium, federal income tax, etc.]. He is retired as of [give date of retirement (whether receiving retired pay or, if Guard/Reserve, awaiting age 60)].

[Selection B: if active duty, still drilling, or in the “grey area” (i.e., no longer drilling, but not yet receiving retired pay), use the following - -] The Defendant is currently a [state rank] in the [here state branch of service, such as “U.S. Air Force” or “Utah Air National Guard”].

6. [Use this clause to protect non-military spouse of non-retired member or retiree with no disability at present. Delete if not needed.] Currently, there is no waiver in place for disability payments, and the court bases the award to Plaintiff set out below on these facts.

-OR-

[for retiree with disability rating] Defendant currently has a VA disability rating of [state percentage] and his election of disability compensation has reduced his military retired pay by [dollar amount]. [Use if parties are still married and divorce will be entered simultaneously with
This amount is based on the VA compensation table rates for veteran and spouse in effect at the time this Order is entered. Upon the parties’ divorce, the VA compensation should be recalculated based on the veteran only. This rate is currently [dollar amount].

**If near the end of the year, add additional sentence:** This amount is expected to increase to $_____ as of December 1, 20__ when the new disability compensation rates go into effect.

Note: This clause helps the spouse to establish a base-line, setting out the current facts and data, as well as the court’s expectations in case the SM decides to waive additional military pension payments for disability compensation in the future.

7. Defendant’s rights under the Servicemembers Civil Relief Act, found at Chapter 50 of Title 50, U.S. Code, have been observed and honored.

Note: It is probably best to insert this into all orders, whether for SMs or retirees, although the SCRA doesn’t apply to retirees and usually does not apply to Guard and Reserve personnel, unless called up to active duty.

8. [This clause is to protect the non-military spouse from an unexpected reduction in payments due to electing disability compensation; delete if not needed] The parties have agreed that Plaintiff shall receive her full share of Defendant’s military retired pay, calculated as set out below. [If Defendant is already getting disability payments, add this: and without further reduction for disability payments (except for passive increases to the level of compensation) or any other reason.] For the purposes of the terms set out herein, military retired pay includes retired pay actually paid or to which Defendant would be entitled based only on length of Defendant’s creditable service; this is not, however, intended to limit the administration of this order by DFAS.

9. [This clause is to allow the non-military spouse to view the amount of total retired pay and any deductions. It is optional.] The terms below require Plaintiff to have knowledge of Defendant’s military retired pay on a regular basis. To avoid the inconvenience of monthly mail or e-mail exchanges of this information, the parties can use the myPay system available on the Defense Finance and Accounting Service (DFAS) website (https://mypay.dfas.mil/mypay.aspx). Defendant has the ability to set up a Limited Access Password for Plaintiff which, along with a proper Login ID, will allow her to view his pay information (but not to make changes). Defendant can locate instructions on how to set up a Limited Access Password for Plaintiff on-line at https://mypay.dfas.mil/FAQ.htm.

10. [CSB/Redux clause – To protect spouse from SM’s election of CSB/Redux bonus of $30,000 at or around the 15-year mark for military service, thus reducing pension share upon retirement, use this clause if the SM has less than 15 years of creditable service. Note that CSB/Redux will no longer be available as of 1/1/18.] If Defendant elects CSB/Redux (a bonus of $30,000 paid at approximately 15 years of service, the election of which reduces the military pension), the Defendant will indemnify Plaintiff for any loss and cooperate as set forth below to protect Plaintiff’s interest in an unreduced share of the military pension.

11. [Blended Retirement System clause – To protect spouse from SM’s opting into the Blended Retirement System, eff. 1/1/18, thus reducing the retired pay multiplier from 2.5% of the High-Three amount to 2.0%, a 40% reduction, which will reduce the spouse’s share of the pension at retirement. The BRS also allows the SM to take in cash 25% or 50 of the discounted present value of the pension at retirement, which would also reduce the spouse’s share.] If Defendant elects to participate in the Blended Retirement System (BRS) at or after January 1, 2018, which would decrease the Plaintiff’s share of the military pension, the Defendant will indemnify and reimburse the Plaintiff for any financial loss incurred. The Defendant shall not elect a cash payout at retirement from the BRS,
which would reduce Plaintiff’s share of the pension, without her consent or approval of the court. The same terms above for indemnification and reimbursement apply to this election.

12. Plaintiff is entitled to former-spouse coverage as the beneficiary of Defendant’s Survivor Benefit Plan (SBP) as set out below [if applicable, and the Plaintiff’s share of the pension below is adjusted to account for her payment of the full SBP premium].

-OR-

Plaintiff is not entitled to former spouse coverage as the beneficiary of Defendant's Survivor Benefit Plan.

13. [Use when the former spouse’s share of the pension is to be adjusted due to allocation to her of entire SBP premium]. Since Plaintiff will be responsible for paying the entire cost of the SBP premium and DFAS will not allocate SBP premiums to either party, Plaintiff’s share of the military retired pay must be adjusted downward to account for her full payment of the premium that is attributable to former spouse coverage. The shift of the premium to Plaintiff results in her share being reduced to ___% of the military retired pay.

Note: The premium is 6.5% of the selected base amount in active-duty cases; it’s about 10% when the member of the Guard/Reserve selected “Option C,” that is, full coverage starting when he/she reaches 20 creditable years of service.

Note: The reduction is not simply 6.5% subtracted from the share of the former spouse (e.g., spouse’s nominal share of 45% less 6.5% for her to pay the full SBP premium = 38.5%). Rather, due to cost-sharing between the parties, since the premium comes “off the top” before division of “disposable retired pay,” the reduction is about 4% - 4.5% for active duty cases. The calculation details are found below, and also in “Military Pension Division: The Servicemember’s Strategy,” a Silent Partner infoletter located at www.nclamp.gov > For Lawyers. You can also do the calculations on the Excel spreadsheet in Chapter 8 of THE MILITARY DIVORCE HANDBOOK (ABA Section of Family Law, 2nd Ed. 2011).

14. [Delete if not applicable] The marital share is a fraction made up of ____ months [or points if Guard/Reserve] of marital pension service, divided by ___, which represents the total months [or points if Guard/Reserve] of Defendant’s military service. Based on this calculation, one-half of the marital share of the divisible retirement benefits is equal to Plaintiff receiving ____% of Defendant’s military retired pay. Note: When a fraction is used in a Guard/Reserve case, it must be expressed in terms of retirement points, not time.

[Data points required by revised definition of “disposable retired pay,” 10 U.S.C. 1408 (a)(4) as required by Sec. 641, Nat. Defense Auth. Act for FY 2017]. The Defendant’s information required by the retired pay center is as follows:

1. FOR ACTIVE DUTY AWARDS

If the member entered the service BEFORE 9/1/80:

On the date of divorce, [date], the member’s military pay grade (rank) was [grade/rank], and the member had [number of years and months] of creditable service.

If the member entered the service AFTER 9/1/80:

On the date of the divorce, [date], the member’s military retired pay base (High-Three) was [$$#$$] and the member had [number of years and months] of creditable service.
2. FOR GUARD/RESERVE MEMBER’S NOT YET RECEIVING RETIRED PAY

If the member entered the service BEFORE 9/1/80:

On the date of divorce, [date], the member’s military pay grade (rank) was [grade/rank], and the member had [#####] Reserve retirement points, and the member had [number of years and months] of service for basic pay purposes.

If the member entered the service AFTER 9/1/80:

On the date of divorce, [date], the member’s military retired pay base (high-3) was [$#####], and the member had [#####] Reserve retirement points.

Note: “High-Three” means the highest 36 months of continuous compensation for the Defendant, using active-duty pay information. For information on what this means in terms of the pension which will be divided by the retired pay center, see the two Silent Partner infoletters on the “Frozen Benefit Rule” at www.nclamp.gov > For Lawyers.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter of this action and the parties hereto. [in non-consent cases, state basis for jurisdiction.]

   Note: Read 10 U.S.C. 1408 (c)(4). In the case of a non-consent order, be sure to include facts in the above section that support court’s jurisdiction under 10 USC 1408(c)(4). This means evidence of domicile of the servicemember or retiree in the state, residence but not due to military orders, or general appearance. The jurisdictional basis must be stated in the order.

2. Plaintiff is entitled to an assignment of Defendant’s military retirement benefits as set forth herein, subject to the conditions set forth in the Decree below.

3. The facts above are incorporated herein by reference to the extent that they represent conclusions of law.

4. The terms of this order are fair, reasonable, adequate and necessary.

5. The parties have knowingly and voluntarily consented to this order. [Only use this clause if the order is entered by consent.]

6. The parties are entitled to the relief granted below.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. For all uniformed services retired pay received after [date], Defendant shall pay Plaintiff [choose an Option from below and insert here]

   Option A: [Percentage] ___% of his military retired pay each month.

   Note: DFAS will accept percentages carried out to four decimal places.

   Note: The non-military spouse receives a specified percent, not to exceed 50%, of disposable retired pay. This increases with cost-of-living adjustments (COLA) for retiree, which are automatic under the regulations and need not be mentioned. This award is used when member has retired, and it is
based on the final retired pay of SM, including post-divorce raises and grade increases. This clause favors the spouse.

**Option B: [Time Rule]** a percentage of the member’s military retired pay, to be computed by multiplying ___% times a fraction, the numerator of which is [insert #] months [or points if Guard/Reserve] of marriage during the Defendant’s creditable military service, divided by the Defendant’s total number of months [or points if Guard/Reserve] of creditable military service.

Note: The spouse gets a percentage, usually 50%, of the marital share of member’s retired pay. This increases with COLAs for retiree, and that is automatic; it need not be mentioned. It is based on the final retired pay of member, including post-divorce raises and grade increases. This clause favors the spouse

Note: Order must contain number of months for numerator – DFAS will not fill that in, although DFAS will complete the denominator when calculating final retired pay. Percent cannot exceed 50% of retired pay for property division.

**Option C: [Set Dollar Amount] $___ per month.**

Note: The spouse receives a set dollar amount, which may not exceed 50% of disposable retired pay. There are no COLAs for spouse, and all COLAs go to the retiree. This clause favors the SM/retiree. Be sure to specify payment method, such as personal check, money order, bank-to-bank transfer, etc.

**Option D: [Hypothetical Award]**

D1: [Active duty hypothetical calculated as of time of division, for all members regardless of service entry date] ___% of the military retired pay the Defendant would have received had the Defendant retired with a retired pay base of $______ and with ___ years of creditable service on ____________________.

D2: [Active duty hypothetical calculated as of time of division; may only be use for members entering service before September 1, 1980] ___% of the military retired pay the Defendant would have received had the Defendant retired with the rank of _____ and with ___ years of creditable service on ____________________.

D3: [Active duty hypothetical calculated as of member’s actual retirement date] ___% of the military retired pay the Defendant would have received had the Defendant retired on his actual retirement date with the rank of ______ and with ___ years of creditable service.

D4: [Reservist hypothetical calculated as of time of division, for all members regardless of service entry date] ___% of the military retired pay the Defendant would have received had the Defendant become eligible to receive military retired pay with a retired pay base of $______ and with ___ retirement points on ____________________.

D5: [Reservist hypothetical calculated as of time of division; may be used for members entering service before September 1, 1980] ___% of the military retired pay the Defendant would have received had the Defendant become eligible to receive retired pay on ____________________, with the rank of ______, with ___ retirement points, and with ______ years of service for basic pay purposes.

D6: [Reservist hypothetical calculated as of the date the member becomes eligible to receive retired pay] ___% of the military retired pay the Defendant would have received had the Defendant become eligible to receive retired pay on the date he attained age 60, with the rank of ______, with ___ retirement points, and with ______ years of service for basic pay purposes.
Note: The spouse receives a hypothetical amount, based on the rank/retired pay base and years of service of the SM at time of separation, divorce or other date, according to state law or agreement of the parties. This increases with COLAs for retiree, and that is automatic; it need not be mentioned. This clause favors the SM/retiree. It is usually used in states which divide retired pay based on the fixed-benefit method, such as Florida, Texas, Kentucky, Tennessee and Oklahoma.

Note: If the clause does not specify a retirement year (i.e., date), DFAS will assume the year to be the actual year of retirement, and that year’s pay scale will be used. If a date is specified, DFAS will freeze the benefit based on the pay tables in effect on that date, not on the pay tables which exist when the SM actually retired or will retire.

Note: These sample clauses are found in the Department of Defense Financial Management Regulation (DODFMR), Volume 7B, Chapter 29, Appendix A, Figure 29-1 (September 2015).

2. Defendant has served at least ten years of creditable service concurrent with at least ten years of marriage to Plaintiff. Plaintiff is entitled to direct payments from DFAS.

-OR-

Defendant will pay Plaintiff directly the amount/share specified in the preceding paragraph. Payments will be due on the first of each month, beginning [date]. In the event that federal law changes to allow direct payments from DFAS to Plaintiff, then this order shall be submitted to DFAS by Plaintiff to accomplish this.

-OR-

Defendant will pay Plaintiff by a voluntary allotment from his retired pay the amount specified in the preceding paragraph. In the event that federal law changes to allow direct payments from DFAS to Plaintiff, then this order shall be submitted to DFAS by Plaintiff to accomplish this.

Note: As another alternative, the parties may agree to payment from Defendant to Plaintiff of maintenance, spousal support or alimony, which is not limited by the 10/10 overlap above; in this case, an alimony clause should be utilized which does not terminate payments at remarriage or cohabitation of Plaintiff.

3. Plaintiff will receive payments at the same time as Defendant. The parties acknowledge that DFAS is not required to begin payments to the former spouse until 90 days after receipt of an acceptable order or the start of retired pay, whichever is later. Defendant will be responsible for making these payments each month to Plaintiff until DFAS begins making these payments to her, and during this interim, Defendant will pay Plaintiff directly her full share, unadjusted for taxes. Payments are due on the first day of each month. Pursuant to Pfister v. Comm’r, 359 F.3d 352, Proctor v. Comm’r, 129 T.C. 92 (2007), Mitchell v. Comm’r, T.C. Summary Opinion 2004-160, Mess v. Comm’r, 79 T.C.M. (CCH) 1443 and Eatinger v. Comm’r, 59 T.C.M. (CCH) 954, the parties acknowledge that the periodic payments made by Defendant to Plaintiff for this interim period of time until direct payments commence from DFAS shall be included in Plaintiff’s income under Section 61 of the Internal Revenue Code, and these payments are likewise deductible from Defendant’s gross income.

4. [Delete if not applicable] Defendant will provide to Plaintiff a Limited Access Password and Login ID which she can use to access the myPay system so that she can verify that she is, in fact, receiving her full share of Defendant’s retired pay each month. Defendant shall set up Plaintiff’s access to myPay and provide the Limited Access Password and corresponding Login ID to her simultaneously with the signing of this Order. Defendant shall not delete Plaintiff’s Limited Access Password without specific written approval from Plaintiff or by court order. If Defendant breaches this
provision, attorney’s fees shall be assessed against him under the enforcement clause below.

5. When DFAS has determined that this order meets the requirements of the applicable federal law as a military pension division order, then it will carry out the provisions of this order and shall give written notice to Plaintiff (at her address set out above) and to her attorney, [name and address], that this order complies with said requirements.

6. Plaintiff will notify DFAS in writing about any changes in her address or in this document affecting these provisions of it, or in the eligibility of any recipient receiving benefits pursuant to it.

7. [This is for protection of spouse; SM/retiree may reject this clause. It is not a requirement for MPDO.] Defendant will provide promptly to Plaintiff any information that she needs in order to have this order honored for direct payment of military pension benefits and will keep her informed at all times of his current address.

8. [This is for protection of spouse; SM/retiree may reject this clause. It is not a requirement for MPDO.] Defendant will provide promptly to Plaintiff any information that she needs in order to have this order honored for direct payment of military pension benefits and will keep her informed at all times of his current address.

9. To implement direct payments from DFAS, Plaintiff will tender a certified copy of this order to DFAS with a certified copy of the parties’ divorce decree and an executed DD Form 2293. [This is a requirement for direct payments from DFAS.]

10. [Selection A: If member is on active duty, or is Guard/Reserve and still drilling, or is in the “grey area” (no longer drilling, but not yet in receipt of retired pay), or is retired and NOT receiving disability compensation, use the following - -] The parties have agreed upon a set level of payments to Plaintiff to guarantee income to her based upon Defendant’s military retired pay without any deductions due to the election of VA Disability Compensation from the Department of Veterans Affairs, the election of Combat-Related Special Compensation (CRSC), or the receipt of Military Disability Retired Pay (MDRP) under Chapter 61, or any other reason. Defendant shall indemnify Plaintiff as to any reduction in her payments from what they would have been based solely on length of service. The parties consent to the court’s retaining continuing jurisdiction to adjust the pension division payments or the property division specified herein if Defendant’s actions or acquiescence results in the waiver of military retired pay in favor of disability payments or if he should take any other action (such as receipt of severance pay, bonuses or an early-out payment) which reduces Plaintiff’s share or amount herein. This retention of jurisdiction is to allow the court to adjust Plaintiff’s share or amount to the pre-reduction level, to reconfigure the property division or to award compensatory alimony or damages so as to carry out the original intent of the court. [NOTE: generally trial courts will not adjudicate this pre- or post-judgment without consent. See Howell v. Howell, decided 5/15/17 by the U.S. Supreme Court, as to judicial indemnification being barred by the USFSPA.]

[Selection B: if retired and already receiving reduced retired pay due to disability compensation, use the following - -] The parties have agreed upon a set level of payments to Plaintiff to guarantee income to her, based upon Defendant’s military retired pay without any additional deductions for disability payments, over and above his present percentage disability rating (___%), or for any other reason. The parties consent to the court’s retaining continuing jurisdiction to adjust the pension division payments or the property division specified herein if Defendant’s actions or acquiescence results in the waiver of additional military retired pay in favor of increased disability payments or if he should take any other action which reduces Plaintiff’s share or amount herein. These actions
include but are not limited to the election of VA disability compensation, the election of Combat-Related Special Compensation (CRSC), or the receipt of Military Disability Retired Pay (MDRP) under Chapter 61 of Title 10, U.S. Code. This retention of jurisdiction is to allow the court to adjust Plaintiff’s share or amount to the pre-reduction level, to reconfigure the property division or to award compensatory alimony or damages so as to carry out the original intent of the court.

11. [Delete if not applicable (i.e., if the SM entered service prior to January 1, 2006)] If the Defendant opts in to the Blended Retirement System (BRS) and that causes a loss or reduction for the Plaintiff as to his/her share or amount of retirement benefits, then the Defendant will indemnify the Plaintiff for any reduction(s) associated with this decision, including any reductions in Plaintiff’s share of the retired pay caused by that election as well as any present value offsets paid by the U.S. Government. If DFAS is unable to pay Plaintiff the full portion of the marital share as set out above, then the Defendant shall pay the Plaintiff directly any shortfall between what Plaintiff gets from DFAS and the full share of her payments as if Defendant had not opted into the BRS.

Notes regarding Service Entry Dates and the Blended Retirement System:
*Before December 31, 2005: Stay in the current retirement system
*January 1, 2006 – December 31, 2017: CHOICE- Stay in the current retirement system –or-- Opt-in to new plan
*After January 1, 2018: Automatically enrolled in new retirement system

Note: The new system has three elements: a 401(k)-style component with the Department of Defense matching funds for entry-level and other servicemembers, a mid-career continuity bonus, and a retirement annuity similar to the one now in place for servicemembers who complete 20 or more years of eligible service.

12. [This is to protect the spouse if the SM obtains civil service employment; delete if representing the SM or if not applicable.] If Defendant shall attempt to waive or convert any portion of his military service, whether active-duty or Guard/Reserve, into federal or state civil service time, without first obtaining Plaintiff’s consent, and the effect of this action is that her benefits would be reduced, then

a. Plaintiff shall receive either:

   i. Non-modifiable alimony equal to the amount or share of the military pension that she was entitled to receive before any waiver (with cost-of-living adjustments, if applicable), and not terminating at her remarriage or cohabitation; or

   ii. A portion of the federal retirement annuity (FERS or CSRS) that provides Plaintiff an amount equal to what she would have received as her share of the military pension had there been no waiver to obtain an enhanced federal retirement annuity.

   iii. In the event of such conversion, pursuant to 5 U.S.C. § 8411(c)(5), Defendant shall authorize the Director of the Office of Personnel Management to deduct and withhold (from the annuity payable to Defendant) an amount equal to the amount that, if the annuity payment were instead a payment of Defendant’s military retired pay, would have been deducted, withheld, and paid to Plaintiff under the terms of this Order. The amount deducted and withheld under this subsection shall be paid to Plaintiff.

b. If the waiver of military pension for federal civil service retirement prevents Plaintiff’s coverage under the Survivor Benefit Plan, then Defendant will –

   i. Designate Plaintiff as beneficiary under the equivalent federal retirement survivor annuity plan and provide equivalent coverage; or
ii. Obtain life insurance (with Plaintiff as the owner) covering his life with a death benefit equal to full SBP coverage; or

iii. Purchase a single-premium annuity (with Plaintiff as the owner) that is equal to the benefits payable for full SBP coverage.

c. Defendant will also notify Plaintiff immediately if he accepts employment with the federal government, and shall include in said notification a copy of his employment application and his employment address. Any subsequent retirement system of Defendant is directed to honor this court order to the extent of Plaintiff’s interest in the military retirement and to the extent that the military retirement is used as a basis of payments or benefits under the other retirement system, program, or plan.

-OR-

[Use if the retiree is already employed by the federal government] Since Defendant is currently employed by the U.S. Civil Service, the terms of this paragraph are made with the purpose of ensuring that nothing involving that employment shall diminish the amount or share of Plaintiff’s pension benefit as specified in Paragraph 1 of this decree. Defendant shall not attempt to waive military retired pay to obtain credit for civil service retirement (CSRS or FERS). If he should do so, then the United States Office of Personnel Management is directed to pay Plaintiff’s share (as set out in Paragraph 1 of this decree) directly to her. The court retains authority over this award to ensure that Plaintiff shall receive her proper share, that such other remedies as may be necessary are still available to Plaintiff, that Defendant acts in good faith in carrying out the terms of this order, that he indemnifies her in the event of any reduction of her amount or share due to his actions, and that the intent of this order will be carried out by both parties in full.

13. [This is to protect spouse from CSB/Redux election which will reduce the military pension upon retirement.] Defendant shall not elect to receive a CSB/Redux bonus. If Defendant does make such an election, then –

a. He shall promptly provide to Plaintiff a copy of any election form he executes as to any bonus or option which affects his retired pay; and

b. He shall indemnify Plaintiff for any loss she incurs (including fees, costs, expenses and damages). In the event of such a loss or reduction, the court shall award Plaintiff an equitable adjustment of her pension division award herein.

c. The remedy shall be to increase Plaintiff’s share of the pension to make up for the decrease caused by CSB/Redux, but – upon application by Plaintiff – the court may allow her an equitable share of the bonus received by Defendant or award such other equitable relief as is just and proper, including the reallocation of marital/community property.

14. [This is to protect spouse if future information is needed regarding member’s status, location or benefits for modification or enforcement purposes; SM may object to this] If Defendant breaches this order and also fails to provide Plaintiff with his date of retirement, last unit of assignment, final rank or grade, final pay, present and past retired pay and current address, then he authorizes Plaintiff to request and obtain this and other information from the Department of Defense and from any department or agency of the U.S. Government.

- OR –

[This is a fall-back clause if SM will not agree with the above clause] If Defendant breaches any
terms in this document, then the court shall award to Plaintiff any and all attorney’s fees she may incur in obtaining information on Defendant from the U.S. government and in enforcement of the provisions herein.

15. If either party violates this order, then the court will indemnify the party seeking enforcement, and the court will award damages, interest at the statutory rate, consequential damages, reasonable expenses and attorney’s fees to that party.

16. The monthly payments herein shall be paid to Plaintiff regardless of her marital status and will not end at remarriage. Any future overpayments to Plaintiff by DFAS are recoverable and subject to involuntary collection from Plaintiff or from the estate of Plaintiff.

17. [This is not necessary but the SM/retiree usually wants to see this in writing.] Plaintiff shall be responsible for the taxes on her share of Defendant’s military retired pay received from DFAS (or from Defendant directly). Plaintiff shall not be entitled to any portion of retired pay upon the death of either party.

18. [Leave this out if this is not awarded by the judge or agreed to by the parties. If you want to be certain about this and are not concerned, when a consent order is involved, about raising “red flags,” you may state: There shall be no Survivor Benefit Plan coverage for Plaintiff.] Defendant shall provide coverage for Plaintiff through the Survivor Benefit Plan (SBP) as follows:

   a. Plaintiff shall be the spouse beneficiary of Defendant’s SBP. Upon their divorce, the Defendant shall immediately elect the Plaintiff as “former spouse beneficiary” for SBP, with his monthly retired pay as the base amount. He shall do nothing to reduce or eliminate her benefits.

   b. Husband will immediately complete DD Form 2656-1 and send the executed form to DFAS as the address shown thereon, with a copy sent simultaneously to Wife’s attorney.

   c. Plaintiff 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.

Note: If Defendant may elect coverage at less than the full amount of his monthly retired pay, then use the following clause: Upon the decision of Defendant for the election of a base amount for the Survivor Benefit Plan, he will elect former spouse coverage, choosing as the base amount $________. [This may be any amount down to $300 a month. The SBP base can also be a percentage of the member’s retired pay.]

19. If Defendant does anything that changes the former spouse election, then an amount equal to the present value of SBP coverage for Plaintiff shall, at the death of Defendant, become an obligation of his estate. In addition, Plaintiff shall be entitled to any other legal or equitable remedies for breach.

Note: The premium for SBP coverage is deducted from the member’s gross retired pay before it is divided between the parties. This “off-the-top” deduction means that the parties share in the premium payment (in the same ratio as the division of military retired pay). If the parties desire to allocate SBP costs entirely to the non-military spouse, this can be difficult. DFAS will not honor such a clause under current law. When the retired pay amount is known or can be estimated with reasonable accuracy (i.e., not mid-career), then one can allocate the cost of SBP premiums to the non-military spouse by the following steps:
☐ Figure out what dollar amount the Plaintiff would get each month as pension division.

☐ Then figure out how much in dollars the SBP premium is (for spouse or former spouse coverage in active-duty cases, use 6.5% of the member’s selected base amount; it is approximately 10% for Guard/Reserve cases).

☐ Then subtract this from Plaintiff’s dollar amount or anticipated dollar amount. This gives her net share less the SBP premium.

☐ Next divide this figure by the disposable retired pay of the Defendant (gross pay less SBP premium) and multiply it by 100.

The resulting percentage is approximately what she should receive to have her pay for the full SBP premium. Go back to #1 of the Decree above and insert the revised percentage in place of 50% (or other fraction) of his disposable retired pay. Also complete Finding of Fact #12.

-OR-

This clause sets out a way for the retired servicemember to be reimbursed by the spouse for the cost of SBP: Plaintiff shall reimburse Defendant within 10 days of each monthly premium payment for the full cost of her SBP coverage.

20. [Use this clause when Plaintiff’s share of pension is reduced to allocate to her the full SBP premium under Finding of Fact #12.] The adjustment herein of the military pension division share for Plaintiff, to shift to her the full premium costs for SBP, shall end upon either of the following two events, either of which would result in no premium payable for SBP:

a. Plaintiff’s remarriage before age 55 (which suspends SBP coverage for her), or

b. The continuous payment of SBP premiums for 360 months and Defendant’s attainment of age 70 (which results in paid-up SBP).

c. When either event occurs, the adjustment herein shall stop, and Plaintiff shall be entitled immediately to her full, unadjusted share of the pension (without regard to shifting payment of the SBP premium). To obtain reversion to the original unadjusted percent or share from DFAS, Plaintiff will apply to the court for an order allowing same, and Defendant hereby stipulates that Plaintiff is entitled to such adjustment when either of the above two events occurs. Plaintiff has a duty to inform Defendant immediately upon her remarriage. Defendant shall cooperate with the entry of a new order effectuating the restoration of Plaintiff’s full, unadjusted ___% share. Until such time as the new order is implemented by DFAS, Defendant shall pay directly to Plaintiff her full ___% share of his gross military retired pay.

21. [Use this clause when there is no SBP coverage at present, either through spousal concurrence or through lapse upon divorce. This requires the SM/retiree to elect SBP coverage for the spouse or former spouse at the next open enrollment period; note that all previous premium payments must be paid before coverage is effective, and this can be costly.] At the next open enrollment period for SBP, the Defendant agrees to elect and pay for coverage for the Plaintiff as his spouse/former spouse, using his full retired pay as the base amount [OR state other amount down to $300 a month].

22. [Use this clause to attempt to give Plaintiff some protections against reduction of disposable retired pay due to election of VA disability compensation or the election of CRSC by retiree] The parties shall comply with the terms of this order in good faith and shall notify the court and the other party if there are any substantial changes which would impact the retired pay of the Defendant. Examples of this include the remarriage of Plaintiff before age 55, which disqualifies her for SBP coverage (thus
justifying termination for Defendant of the SBP premium deduction) and election by Defendant of VA disability compensation or Combat-Related Special Compensation, either of which would diminish the available retired pay of Defendant (thus reducing the share for Plaintiff). If the Defendant takes any action to diminish Plaintiff’s share or amount of his military retired pay, then this court reserves jurisdiction to amend the pension division terms to increase Plaintiff’s share of Defendant’s retired pay (e.g., White v. White, 152 N.C. App. 588, 568 S.E.2d 283 (2002), to indemnify the Plaintiff (e.g. Hillard v. Hillard, 733 S.E. 2d 176 (N.C. App. 2012), or to award compensatory alimony, to re-open the property division or to take other remedial action to grant equitable relief.

________________________________     Date: __________________
District Court Judge

[If order is entered by consent, use the following language.]

WE CONSENT:

------, Plaintiff                          ------, Attorney for Plaintiff

_____ COUNTY
NORTH CAROLINA

I certify that the following person personally appeared before me this day, and I have personal knowledge of the identity of the principal or have seen satisfactory evidence of the principal’s identity, by a current state or federal identification with the principal’s photograph in the form of a North Carolina Driver’s License; acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: name(s) of principal(s).

Date: __________________
(Notary’s printed or typed name), Notary Public

(Official Seal)        My commission expires: __________________

------, Defendant                          ------, Attorney for Defendant

_____ COUNTY
NORTH CAROLINA

I certify that the following person personally appeared before me this day, and I have personal knowledge of the identity of the principal or have seen satisfactory evidence of the principal’s identity, by a current state or federal identification with the principal’s photograph in the form of a North Carolina Driver’s
License; acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: name(s) of principal(s).

Date: ____________________________

(Official Seal) My commission expires: ____________________________

(Notary’s printed or typed name), Notary Public