DIVISION OF MILITARY BENEFITS IN FAMILY LAW

Stassinopoulos & Schweitzer, LLP
by John H. Schweitzer, CFLS
HANDLING PROPERTY DIVISION & DIVISION OF MILITARY BENEFITS

• MILITARY RETIREMENT BENEFITS
  – “Secrets of the Inner Sanctum” Continued
    • Dividing Military Retirement – Before or After?
      – In re Marriage of Krempin, 70 C.A. 4th 1008, 83 Cal. Rptr. 2d 134.
        » Non service spouse waived SS in reliance upon
          ordered division of military retired pay
        • Outcome? Anyone? Buler? Buler?.....
HANDLING PROPERTY DIVISION & DIVISION OF MILITARY BENEFITS

• MILITARY RETIREMENT BENEFITS
  – “Secrets of the Inner Sanctum” Continued
    • Secrets of Gilmore
      – In re Marriage of Gillmore (1981) 29 Cal. 3rd 418
        » First Eligible to Retire – Non Employee Spouse
      – In re Marriage of Scott (1984) 156 Cal App. 3d 251
        » Extended Holding of Gillmore to Active Duty Servicemembers
    – CAVEAT: DFAS WILL NOT ENFORCE GILLMORE
HANDLING PROPERTY DIVISION
& DIVISION OF MILITARY BENEFITS

• THE SURVIVOR BENEFIT PLAN
  – State court may order the Servicemember to make an election to name his spouse a “former Spouse” beneficiary
    • If this happens, please make the designation a “deemed election”
  – Deemed Election Language
  – One-year rule
    • DD Form 2656-10
  – Who pays the premium?
    • Ratio
    • Smith Analysis
    • Akin to a “property Right?”
THE SURVIVOR BENEFIT PLAN CONTINUED

“"My 12 – Step Plan"

1. Who can be beneficiary?
2. Can a court compel the servicemember to name a former spouse as a beneficiary?
3. Must the court compel the servicemember to name a former spouse as beneficiary?
4. How much does a beneficiary get?
HANDLING PROPERTY DIVISION & DIVISION OF MILITARY BENEFITS

• THE SURVIVOR BENEFIT PLAN CONTINUED
  – "My 12 – Step Plan"
    • 5. How much does it cost?
    • 6. How long do you pay premiums?
      – Remarriage before 55
    • 7. Who pays the premium?
      – Silence everybody, the Courts Speak!
    • 8. When does coverage begin?
HANDLING PROPERTY DIVISION & DIVISION OF MILITARY BENEFITS

• THE SURVIVOR BENEFIT PLAN CONTINUED
  – “My 12 – Step Plan”
    • 9. How is the election made?
      – Compelled by the court?
    • 10. When does the election have to be made?
      – At the time the servicemember retires or?
    • 11. Are there any critical deadlines? Duh??
      – Drop dead deadlines: 1. One year rule; 2. One year to request it by deemed election from former spouse
    • 12. Is SBP economical?
HANDLING PROPERTY DIVISION & DIVISION OF MILITARY BENEFITS

• VA Disability Benefits & Early Separation
  – After separation from military but not retired
  – After retirement from military service
  – TDRL (Temporary Disability Retirement List)
    • 18 months with 5 year maximum
  – PDRL (Permanent Disability Retirement List)
    • FFD, PR, or D w/SP
    • Division or Garnishment of retirement pay, VA Disability Pay or TDRL/PDRL
  – REDUX/SRB
HANDLING PROPERTY DIVISION & DIVISION OF MILITARY BENEFITS

• MEDICAL, HEALTH & LIFE INSURANCE BENEFITS
  – 20/20/20 Spouse
  – 20/20/15 Spouse
  – Anything Less – What do I get, Bob?
    • COBRA – Consolidated Omnibus Budget Reconciliation Act
    • CHCBP – Continuing Health Care Benefits Plan
      – 10 USC § 1078(a)
        » 18 months, 36 months & BINGO!
CURRENT STATUS OF MILITARY ISSUES IN FAMILY LAW

• WHERE TO BRING THE FAMILY LAW CASE?
  – Let’s look at everything we have just discussed!
CURRENT STATUS OF MILITARY ISSUES IN FAMILY LAW

• EFFECT OF FOREIGN FAMILY LAW CASES AND JUDGMENTS
  – Sister State/Foreign State
  – Foreign Country – Hague/UCCJEA
    • Does it involve child custody and support?
CURRENT STATUS OF MILITARY ISSUES IN FAMILY LAW

• ENFORCEMENT OF FAMILY LAW ORDERS AND JUDGMENTS
  – Out of State Orders
  – Registered Orders
  – Military Protective Orders
  – Military Enforcement of Civil Orders
CURRENT STATUS OF MILITARY ISSUES IN FAMILY LAW

• EXAMINATION OF RECENT DEVELOPMENTS AND CASE LAW
  – Amezquita Case – Jurisdiction
  – Domestic Partnership
QUESTIONS?

THE END!!