Know the Law; Explain It to the Client

- Three types of military retirement
- USFSPA - 10 USC 1408
- 10/10 overlap = garnishment
- LEGAL EAGLE handouts for clients
"The Bounty after the Mutiny"
3 military retirement systems – KNOW them!

Final Retired Pay
High-3
REDUX
3 military retirement systems – KNOW them!

Final Retired Pay
High-3
REdux

“Pre-Retirement Counseling Guide” –
www.armyg1.army.mil/rso/preretirement.asp

“Which Retired Pay Plan Are You Under?”
– same website as above

“Which System Applies to You?”
http://militarypay.defense.gov/retirement/ad/01_whichsystem.html
CSB = Career Status Bonus

$30,000
Know the Basics
Know the Basics

• Regulations
• Federal jurisdiction – three tests (domicile, consent, residence not due to military assignment), 10 U.S.C. 1408(c)(4)
• Wording of the pension division clause
• Four acceptable division methods
FORGET LONG-ARM STATUTES...

THROW AWAY INTERNATIONAL SHOE

FEDERAL JURISDICTIONAL LIMITS:

10 USC 1408(c)(4)
PENSION JURISDICTION IS LIMITED TO:

1. Domicile
2. Consent
3. Residence not due to military assignment
Residence test: *SM resides in State A* not due to military orders

Example: Airman Smith assigned to Eglin AFB, FL – but lives in Gulf Shores, AL to be near his parents
DOMICILE

• PHYSICAL PRESENCE (excluding temporary absences)

• INTENT AS SHOWN BY...
  – state income taxes
  – car title, registration
  – driver's license
  – voting
  – home ownership
  – in-state tuition
  – voting
  – bank accounts
“YOU CAN’T SUE ME HERE - - I’M FROM KANSAS!

Ft. Bragg, NC
Domicile of servicemembers...

- Servicemembers Civil Relief Act – protects domicile for voting, tax purposes
- False domicile claims
- Costly to litigate in 2 states!
# Leave-and-Earnings Statement

**State of Residence for Tax Purposes**

<table>
<thead>
<tr>
<th>Type</th>
<th>ID</th>
<th>Name (Last, First, MI)</th>
<th>SOC. Sec. No.</th>
<th>Grade</th>
<th>Pay Date</th>
<th>Yrs SVC</th>
<th>ETS</th>
<th>Branch</th>
<th>A/S</th>
<th>Period Covered</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>West Virginia</td>
<td></td>
<td></td>
<td>790401</td>
<td>20</td>
<td></td>
<td></td>
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<td>1-30 Sep 99</td>
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**Summary**

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<tr>
<th>Type</th>
<th>Amount</th>
<th>Type</th>
<th>Amount</th>
<th>Type</th>
<th>Amount</th>
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</thead>
<tbody>
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<td>DISCRETIONARY ALT</td>
<td>525.00</td>
<td>-Tot Ent</td>
<td>6,091.86</td>
<td></td>
<td></td>
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<tr>
<td>-Tot Ded</td>
<td>681.59</td>
<td>-Tot Allt</td>
<td>525.00</td>
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<tr>
<td>-Net Amt</td>
<td>4,885.27</td>
<td>-EOM Pay</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>TOTAL</td>
<td>6,091.86</td>
<td></td>
<td>525.00</td>
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</table>

**Leaf and Earnings Statement**

**Entitlements**

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<th>Type</th>
<th>Amount</th>
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<tbody>
<tr>
<td>BASE PAY</td>
<td>4566.60</td>
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<tr>
<td>PAY</td>
<td>Data</td>
</tr>
<tr>
<td>BAH Type</td>
<td>W/DEP</td>
</tr>
<tr>
<td>BAH Depn SPOUSE</td>
<td>22041</td>
</tr>
<tr>
<td>BAH Zip</td>
<td>22041</td>
</tr>
<tr>
<td>Rent Amt</td>
<td>.00</td>
</tr>
<tr>
<td>Share</td>
<td>1</td>
</tr>
</tbody>
</table>

**Remarks**

- JANUARY 1, 2000: WILL YOU GET PAID?
- YES! DFAS IS READY. Visit HTTP://WWW.DFAS.MIL/Y2K FOR MORE INFORMATION ON HOW YOU CAN PREPARE FOR Y2K.
- TRICARE QUESTIONS? CALL LOCAL TRICARE SERVICE CENTER, MILITARY HOSPITAL HEALTH BENEFITS ADVISOR OR SEND E-MAIL TO: TRICARE_HELP@OTSG-AMC.DD.MIL

**Notes**

- ARMY PERSONNEL TO OBTAIN INFORMATION BY USING A PERSONAL AND A TOUCH TONE PHONE TO ACCESS YOUR LASTEST PAY INFORMATION.

DFAS Form 702, Feb 94

LES Record: 211
> Filing the lawsuit... or

> Responding to it

CONSENT
Safe havens?

• Unvested pension is Sep. Prop. in ARK., IND., ALA.

• Rest of states don’t require “vesting”

• Puerto Rico doesn’t divide non-contributory pensions
What is Spouse’s Share?

- 50% of Pension?

“Wife shall receive 50% of the military retirement benefits of Husband.”
What is Spouse’s Share?

- 50% of Pension?
- ONLY if married during SM’s entire career…
- Otherwise- 50% of marital share of pension
Wording the pension division clause – the *marital fraction*

- Majority rule
- Minority rule
Pension division formulas

• Majority of states: 50% X “marital fraction” X final retired pay
Majority Marital Fraction:

\[
\text{Yrs. Marital Military Svc.} = \frac{20}{X} \quad \text{Yrs. Total Military Svc.}
\]

(When COL Roberts is still on active duty...)
Pension division formulas

• Minority of states: 50% X “marital fraction” X retired pay earned as of divorce date
Minority Marital Fraction:

(When COL Roberts is still on active duty…)

\[
\frac{\text{Yrs. Marital Military Svc. till divorce}}{\text{Yrs. Total Military Svc. till divorce}}
\]
“All Clauses Considered”

– SET DOLLAR AMOUNT

(favors SM - no COLA),

-or-

– % OF DISPOSABLE RETIRED PAY

-or-
“All Clauses Considered”

- **FORMULA CLAUSE** (when SM is not yet ret’d)

-or-

- **HYPOTHETICAL**

(favors SM - freezes grade/ years)
RULES FOR DIRECT PAY ORDERS

• NOT MORE THAN 50% OF DISPOSABLE RETIRED PAY
• STARTING NO LATER THAN 90 DAYS AFTER SERVICE ON DFAS
• PMTS END AT DEATH OF RETIREE OR SPOUSE, WHICHEVER OCCURS FIRST
• PROSPECTIVE ONLY-- NO ARREARS
RULES FOR DIRECT PAY ORDERS

- SERVE ON DFAS CERTIFIED MAIL [RET. RECEIPT REQUESTED]
- DECREE TO BE CERTIFIED WITHIN 90 DAYS OF SERVICE
- APPLICATION LETTER SIGNED BY SPOUSE [DD Form 2293, www.dfas.mil]
Know the Basics

- Wording, logistics
- Documents
  - LES [Leave and Earnings Statement]
  - RAS [Retiree Account Statement]
RETIREE ACCOUNT STATEMENT

STATEMENT EFFECTIVE DATE
DEC 16, 2005
NEW PAY DUE AS OF
FEB 01, 2006
SSN
123 – 45 – 6789

PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES
Major John Q. Doe, USAF (Ret.)
123 Green St
Apex, NC 27511-1234

DFAS-CL POINTS OF CONTACT
DEFENSE FINANCE AND ACCOUNTING SERVICE
US MILITARY RETIREMENT PAY
PO BOX 7130
LONDON KY 40742-7130
COMMERCIAL (216) 522-5955
TOLL FREE 1-800-321-1080
TOLL FREE FAX 1-800-469-6559
myPAY
https://myPay.dfas.mil
1-877-363-3677

PAY ITEM DESCRIPTION

<table>
<thead>
<tr>
<th>ITEM</th>
<th>OLD</th>
<th>NEW</th>
<th>ITEM</th>
<th>OLD</th>
<th>NEW</th>
</tr>
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<tr>
<td>GROSS PAY</td>
<td>2,746.00</td>
<td>2,746.00</td>
<td>FITW</td>
<td>191.31</td>
<td>209.05</td>
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<tr>
<td>VA WAIVER</td>
<td>591.30</td>
<td>473.04</td>
<td>ALLOTMENTS/BONDS</td>
<td>4.00</td>
<td>4.00</td>
</tr>
<tr>
<td>SBP COSTS</td>
<td>179.28</td>
<td>179.28</td>
<td>NET PAY</td>
<td>1,744.11</td>
<td>1,844.63</td>
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<tr>
<td>TAXABLE INCOME</td>
<td>1,975.42</td>
<td>2,093.68</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PAYMENT ADDRESS

DIRECT DEPOSIT

YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)

| TAXABLE INCOME: | 1,975.42 |
| FEDERAL INCOME TAX WITHHELD: | 191.31 |

TAXES

FEDERAL WITHHOLDING STATUS: SINGLE
TOTAL EXEMPTIONS: .01
FEDERAL INCOME TAX WITHHELD: 209.05

SURVIVOR BENEFIT PLAN (SBP) COVERAGE

<table>
<thead>
<tr>
<th>SBP COVERAGE TYPE:</th>
<th>SPOUSE AND CHILD(REN)</th>
<th>ANNUITY BASE AMOUNT:</th>
<th>2750.50</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPOUSE COST:</td>
<td>176.78</td>
<td>55% ANNUITY AMOUNT:</td>
<td>1,512.77</td>
</tr>
<tr>
<td>CHILD COST:</td>
<td>50</td>
<td>40% ANNUITY AMOUNT:</td>
<td>1,100.20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SPOUSE DOB:</td>
<td>12 DEC 1945</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CHILD DOB:</td>
<td>13 MAR 1996</td>
</tr>
</tbody>
</table>

THE ANNUITY PAYABLE IS 55% OF YOUR ANNUITY BASE AMOUNT UNTIL YOUR SPOUSE REACHES AGE 62. AT AGE 62, THE ANNUITY MAY BE REDUCED DUE TO SOCIAL SECURITY OFFSET, OR UNDER THE TWO-TIER FORMULA, THAT REDUCTION MAY RESULT IN AN ANNUITY THAT RANGES BETWEEN 40% ($1100.20) AND 55% ($1512.77) OF THE ANNUITY BASE AMOUNT. THE COMBINATION OF THE SBP ANNUITY AND THE SOCIAL SECURITY BENEFITS WILL PROVIDE TOTAL PAYMENTS FROM DFAS AND THE SOCIAL SECURITY ADMINISTRATION OF AT LEAST 55% OF YOUR BASE AMOUNT. THE ACTUAL ANNUITY PAYABLE IS DEPENDENT ON FACTORS IN EFFECT WHEN THE ANNUITY IS ESTABLISHED.
Know the Basics - Resources

- 6 SILENT PARTNERs re military pension division

www.abanet.org/family/military

- DFAS guide for attorneys as to military pension division, “Dividing Military Retired Pay”

Disability Details

• Waiver of ret’d pay for VA disability $

• VA is tax-free, AND…

news
to me!
V.A. DISABILITY PAY = NOT DIVISIBLE!

(ditto for most of Military Disability Retired Pay)
Post-Divorce VA Elections: How the states are responding

- Go to great lengths to help former spouse
  - Indemnification
  - Damage award
  - Re-open the property division
  - Compensatory alimony
How to protect the non-military spouse from VA waivers

• Indemnification Clause

• DON’T SAY “John will take no action…”

• DO SAY “John will compensate Mary…”
Indemnification Clause

- State facts, assumptions [“John is COL with over 18 years’ service in Army, will receive pension based on longevity after at least 20 years of service.”]
Indemnification Clause

• State facts, assumptions [“John is COL with over 18 years’ service in Army, will receive pension based on longevity after at least 20 years of service”]

• State intent [“Mary to get unreduced share of pension based on years of service”]
Indemnification Clause

• State facts, assumptions ["John is COL with over 18 years’ service in Army, will receive pension based on longevity after at least 20 years of service"]
• State intent ["Mary to get unreduced share of pension based on years of service"]
• Don’t call it Disposable Retired Pay – that limits her share b/c VA is excluded from DRP
Indemnification Clause

• State duty of SM/retiree [“John will compensate Mary if there is any reduction in her share of the longevity pension.”]

• Include interest on unpaid amount [“The breaching party will also pay interest at the statutory rate on all unpaid amounts and damages.”]
Indemnification Clause

• State duty of SM/retiree [“John will compensate Mary if there is any reduction in her share of the longevity pension.”]

• Indemnify also as to expenses – not just REASONABLE [“Each party will pay for all expenses and damages incurred because of the other’s breach of this agreement.”]
VA with a Vengeance

CRDP and CRSC – “The Evil Twins”
found at...

www.abanet.org/family/military > SILENT PARTNER
CRDP to the Rescue

• CRDP = Concurrent Retirement & Disability Pay

• Available if ≥50% disability rating

• Return of waived military retired pay
CRDP to the Rescue

- Phased in over 10 yrs [2004-2014]
- 100% disabled = immediately vested
- Front-loading of payments
Based on information received from the VA, your CRDP amount is $283.96.
**CRSC Pay Statement**

<table>
<thead>
<tr>
<th>STATEMENT EFFECTIVE DATE</th>
<th>PAYMENT DATE</th>
<th>SSN</th>
</tr>
</thead>
<tbody>
<tr>
<td>APR 21, 2006</td>
<td>MAY 01, 2006</td>
<td>123-45-6789</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>RETIREE’S NAME AND ADDRESS</th>
<th>HOW TO CONTACT US</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAJOR JOHN Q. DOE, USAF (RET.) 123 GREEN STREET APEX, NC 27511-1234</td>
<td>DEFENSE FINANCE AND ACCOUNTING SERVICE US MILITARY RETIRED PAY PO BOX 7130 LONDON, KY 40742-7130 COMMERCIAL (216) 522-6398 TOLL-FREE 1-800-472-7098 TOLL-FREE FAX 1-800-469-6559 myPay <a href="https://myPay.dfas.mil">https://myPay.dfas.mil</a> 1-877-363-3677</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PAYMENT INFORMATION</th>
<th>ENTITLEMENT INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRSC Payment 377.00</td>
<td>Retired Pay Before Deductions 2,746.00</td>
</tr>
<tr>
<td>CRSC Debt Deduction 0</td>
<td>Retired Pay Offset by DVA Compensation 757.00</td>
</tr>
<tr>
<td>CRSC Garnishment Deduction 0</td>
<td>CRSC Debt Balance 0</td>
</tr>
<tr>
<td>CRSC Net Pay 377.00</td>
<td>Branch of Military Service AIR FORCE Garnishment Being Withheld NO</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING</th>
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</thead>
<tbody>
<tr>
<td>CRSC SPECIAL MONTHLY COMPENSATION CODE 00</td>
</tr>
<tr>
<td>UNEMPLOYABLE NO</td>
</tr>
<tr>
<td>DVA DISABILITY % 50</td>
</tr>
<tr>
<td>COMBAT RELATED DISABILITY % 30</td>
</tr>
<tr>
<td>PURPLE HEART % 00</td>
</tr>
<tr>
<td>CRSC START DATE JAN 01, 2004</td>
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<tr>
<td>SPECIAL MONTHLY COMPENSATION START DATE</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>REMARKS</th>
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</thead>
<tbody>
<tr>
<td>This is your monthly CRSC statement. Please refer to myPay frequently asked questions for additional information about CRSC and this statement.</td>
</tr>
</tbody>
</table>

CRSC statement is at secure “myPay” website for retirees.
TSP is Retirement, Too

• Thrift Savings Plan = defined contribution plan: www.tsp.gov

• Participation? Check the LES!
Waiver Wording

- “Mary Doe hereby waives and gives up any claim she may have to the military retired pay [and Survivor Benefit Plan] of John Doe.”
DID YOU FORGET SOMETHING?
For those left behind -

- S.B.P. [Survivor Benefit Plan...]?
- or **Single Biggest Problem????**
SBP – Single Biggest Problem?

• SBP = 10 USC 1447 et seq.
• Benefit at death of retiree/SM = 55% of base amount
• Cost (from retired pay) = 6.5% of base amt for “spouse/former spouse coverage”
• Benefits, disadvantages
• Checklist for judges
SBP DEFINED

• Court can order SBP coverage
• Without it, payments to former spouse end at the retiree's death
• Unitary – cannot divide, share with your NEW spouse!
SBP DEFINED

- Premiums come “off the top” before DRP (if court-ordered)

- Avoid SGLI as alternative (Ridgway case)
“MARY DOE SHALL RECEIVE 46.5% OF ALL THE MILITARY RETIREMENT BENEFITS OF JOHN DOE, INCLUDING EVERYTHING ATTRIBUTABLE TO HIS SERVICE IN THE MILITARY TOWARDS A PENSION, AND EVERY PENSION BENEFIT OF HIS.”
If representing SPOUSE –

- **Life**: SPECIFY SHARE OF PENSION
- **Death**: IF SM DIES AFTER DIVORCE, SBP COVERAGE TO ‘FORMER SPOUSE’

“JOHN WILL IMMEDIATELY ELECT MARY AS SBP FORMER-SPOUSE BENEFICIARY.”
SBP Strategies

• Shifting the premium to FS...

• SBP suspended if FS remarries before 55
“Timing Is Everything”

- The 10-Year Rule for pension division garnishment
- The TWO SBP deadlines for order submission to DFAS
- Medical care for former spouses

Dealing with Deadlines
The "10-Year Rule"

COURT ORDER...

+ 10 YRS OF CREDITABLE SERVICE

+ 10 YRS OF MARRIAGE DURING SVC.

= DIRECT PAYMENT FROM DFAS

**NOT a rule of divisibility!**
SURVIVOR BENEFIT PLAN

- One-year deadline
  - From divorce if SM makes the election
  - From date of SBP order if FS sends “deemed election”
"20-20-20 COVERAGE"

20 YRS OF MARRIAGE
+ 20 YRS OF CREDITABLE SVC
+ OVERLAP OF 20 YEARS
= MILITARY MEDICAL COVERAGE

Dealing with Deadlines
Other Medical Coverage

- CHCBP – 10 USC 1078a
  - Premium-based
  - Normally 36 months after divorce
  - BUT INDEFINITE if:
    - Pension division OR SBP coverage in order
    - Unremarried if under 55
Who ya’ gonna call?
“Who ya’ gonna call?”

• ABA FAMILY LAW SECTION’S MILITARY COMMITTEE:
  www.abanet.org/family/military/

• NC STATE BAR LAMP COMMITTEE:
  www.nclamp.gov
“Who ya’ gonna call?”

• DFAS WEBSITE: www.dfas.mil

• ARMY RETIREMENT SERVICES: www.armyg1.army.mil/rso/rso.asp
Whoooo Ya Gonna Call?????
“Who ya’ gonna call?”
The End