Part I
Pension Division Issues Involving Concurrent Retirement and Disability Pay and Combat Related Special Compensation

Voluntary Separation Benefit Programs
- Variable Separation Incentive (VSI) – annual pay-out for years program
- Special Separation Bonus (SSB) – one-time payment program
- Are they Separate Property or Community Property?
  - Divorce, more likely than not
  - Post-divorce, who knows
Concurrent Receipt and Disability Pay (CRDP)

- What is it?
  - Replaces/restores retired pay waived by SM to receive VA disability compensation
  - Available if 50% VA disability or more
  - Return of waived military retired pay
  - Was phased in over 10 years [2004-2014]
  - Now completely in effect
  - FS May need to resubmit papers to DFAS

CRDP Cont’d

- How Does it affect FS’s share of DRP?
  - Automatic if SM is receiving ≥ 50% VA disability
- Effect on USFSPA direct payments to FS?
  - Replaces waived VA; increases FS entitlement

Pg. 2 of RAS: “Based on information received from the VA, your CRDP amount is $___.”

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MESSAGE SECTION

- Based on information received from the VA, your CRDP amount is $___.
Combat Related Special Compensation (CRSC)

- **What is it?**
  - 10% VA disability or more that is combat related
  - SM must apply and elect
  - SM can't get CRDP and CRSC
  - CRDP taxable; CRSC is not taxable
  - Effect on SM is VA+ either CRDP (Ret'd Pay) or CRSC
  - SM must annually make election in January of CRDP or CRSC

CRSC Cont'd

- **Is it covered by the USFSPA?**
- **How does it affect FS's share of DRP?**
- **Can**
  - it be used by the SM to defeat FS’s right to receive her share of DRP?
- **What can be done about it?**
  - Put minimum $ amt in Order to be paid by SM to FS; Gillin v. Gillin, 307 S.W.3d 395
    (Tex.Ct.App.–San Antonio 2009)

CRSC Cont'd

- Provide for alimony in lieu of the retirement
- Put indemnity language in the FDOD/DRO to protect the FS’s award
- If allowable, provide to reopen award if SM elects CRSC to FS’s detriment
Jane and Jack and the CRSC Attack

- Combat-Related Special Compensation
- 10 U.S.C. 1413a
  - Purple Heart, or – Armed conflict
  - Hazardous service
  - Conditions simulating war, or
  - Instrumentality of war

Only for retirees who have waived pension for disability

Represents the “combat-related” part of VA disability

Must apply for it

And...
Jane and Jack and the CRSC Attack

- CRDP stops when you elect CRSC!
- Retroactive collection back of past pmts
  - From retiree in initial CRSC check
  - From FS \(\rightarrow\) Yes, but can claim hardship
- No notice to FS
- Open season each January
- Retiree can switch back & forth once a year as is most monetarily or tax advantageous

James H. Higdon – ABA LAMP Seminar

CRSC Pay Statement

STATEMENT EFFECTIVE DATE
APR 21, 2006
PAYMENT DATE
MAY 01, 2006
SSN
123-45-6789
RETIREE’S NAME AND ADDRESS
MAJOR JOHN Q. DOE, USAF (RET.)
123 GREEN STREET
APEX, NC 27511-1234
PAYMENT ADDRESS
DIRECT DEPOSIT
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
https://myPay.dfas.mil

PAYMENT INFORMATION
CRSC Payment
377.00
CRSC Debt Deduction
0
CRSC Garnishment Deduction
0
CRSC Net Pay
377.00
Retired Pay Before Deductions
2,746.00
Retired Pay Offset by DVA Compensation
757.00
CRSC Debt Balance
0
Branch of Military Service
AIR FORCE
Garnishment Being Withheld
NO

THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING
CRSC SPECIAL MONTHLY COMPENSATION CODE
00
UNEMPLOYABLE
NO
DVA DISABILITY %
50
COMBAT RELATED DISABILITY %
30
PURPLE HEART %
00
CRSC START DATE
JAN 01, 2004
SPECIAL MONTHLY COMPENSATION START DATE

REMARKS
This is your monthly CRSC statement. Please refer to myPay frequently asked questions for additional information about CRSC and this statement.

Pension division, then VA waiver

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At retirement After VA waiver
Part II

- Post-Divorce Medical Benefits for Former Spouses, especially those with less than 15 year military marriages
- New TRICARE Young Adults Program
Medical and Commissary Benefits for Military Former Spouses

- See 10 U.S.C. §§ 1072, 1074, 1076, 1077, 1078, 1078(a)
- Commissary and Exchange Privileges for Former Spouses
  - 20-20-20 Rule (Does not lose this benefit if remarries)
- Medical and Dental Benefits for Former Spouses of Active Duty members
  - 20-20-20 Rule and remain unmarried and not elect entitlement to other medical coverage – otherwise, lose medical benefit forever
- Medical and Dental Benefits for Former Spouses of Reservists
  - 20-20-20 Rule is not available until Reservist reaches age 60 and FS remains unmarried and not recipient of other medical coverage

Continued Health Care Benefit Program

- (3) A person who-
  - (A) is an unremarried former spouse of a member or former member of the uniformed services; and
  - (B) on the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under this chapter or transitional health care under section 1145 of this title as a dependent of the member or former member and
  - (C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072 of this title or ends a one-year period of dependency under subparagraph (H) of such sections.

Transitional Coverage

- For Unremarried Former Spouses who:
  - Do not qualify as a 20/20/20 Spouse
  - Can be 20/15/15 Spouses (1 year + 3 years)
  - If not otherwise qualified (3 years)
- 2014 Cost $1,193/qtr \( \approx \$397.67/mo \)
- 2015 Cost $1,275 qtr \( \approx \$425/mo \)
- Must apply and pay first qtrly pmt w/i 90 days of date of decree
Transitional Coverage cont’d

- Can find application and “facts” by googling CHCBP
- Coverage identical to TRICARE Standard
- Entitled to Express Scripts Prescription service

Unlimited Coverage

- Can be tacked to Transitional Coverage:
- Cannot have remarried before age 55; and
- Must have been enrolled in CHCBP or Tricare as the dependent of an involuntarily separated member (or military retiree) (at some time) during the 18 months before the date of the divorce; and
- Is receiving any portion of SM’s retired pay, AND/OR a SBP annuity based upon the SM’s retired pay; or

Unlimited Coverage cont’d

- Has a court order for the payment of any portion of the SM’s retire pay of the member or former member; or
- Has a written agreement (whether voluntary or pursuant to a court order) which provides for an election by the SM to provide a SBP annuity to the former spouse
  (CHCBP Handbook, page 23)
Unlimited Coverage Cont’d

- Just like Transitional Coverage:
  - Cost identical
  - Must apply before a specific Transitional Coverage period ends, i.e., 3 yrs or 4 yrs
  - Coverage identical to TRICARE Standard
  - Entitled to Express Scripts Prescription Service

TRICARE Young Adult

TRICARE Young Adult is available to purchase for adult children of SM’s who are no longer eligible for the “regular” TRICARE coverage and are at least age 21, but not older than age 26.

Eligibility for TRICARE Young Adult

- An adult child of an eligible sponsor. Eligible sponsors include:
  - Active SMs
  - Retired SMs
  - Activated Guard/Reserve members
  - Non-activated Guard/Reserve members using TRICARE Reserve Select
  - Retired Guard members using TRICARE Retired Reserve
- FS cannot be sponsor -- she has only derivative coverage from her sponsor!
Eligibility for TRICARE Young Adult, Cont.

- Additionally, the child must be:
  - Unmarried
  - At least age 21 but not yet 26
  - If the child is enrolled full-time at an institute of higher learning, and the sponsor provides 50 percent of their financial support, eligibility may not begin until age 23 or upon graduation, whichever occurs first.
  - Not eligible to enroll in an employer-sponsored health plan based on your own employment
  - Not otherwise eligible for TRICARE program coverage

Cost and Coverage of TRICARE Young Adult

- Covers medical and pharmacy benefits
- Does not include dental coverage
- Cost: Current Monthly premiums:
  - Prime Option: $180 per month
  - Standard Option: $156 per month

Part III
Mistakes that Prevent DFAS from Implementing your Military Retirement Division Order
Divorce Formula for Active Duty

- **Active Duty Marital Formula (Most States):**
  
  \[ \text{50}\% \times \left( \frac{\text{Months Married Active Duty}}{\text{Total Months Active Duty on Retirement}} \right) \times \text{DRP} \]

- **Texas (& FL, OK) Formula –**
  
  Division/FMV as of date of Divorce:
  
  \[ \text{50}\% \times \left( \frac{\text{Months Married Active Duty}}{\text{Total Months Active Duty on Divorce}} \right) \times \left( \frac{\text{SM's entitlement to retired pay on date of divorce} \times \left( \frac{0.025 \times \text{complete months Active Duty}}{12} \right) \times \text{Current H3BP}}{\text{GRP at Retirement}} \right) \times \text{DRP} \]

- **What about TERA?**
  
  - 10 USC §1293
  - Retired pay percentage entitlement reduced by \( \frac{1}{12} \times 1\% \) for ea. month short of 240 months.
Divorce Formula for Active Duty cont’d

- What about SM VA/CRSC protection language for FS
  - Indemnity protection language
- What about Active Duty COLA entitlements for FS post-divorce**
  - Retired Pay COLAs by the DFAS
  - Active Duty COLAs – must be provided for in order

FS “Gillin” Language

. IT IS FURTHER ORDERED AND DECREED that the award herein shall in no event be less than $____ per month of the disposable retired pay of SERVICE MEMBER together with all active duty COLAs hereafter applicable. The Court recognizes, in making this award, that the DFAS, pursuant to the USFSPA, is only authorized to pay FORMER SPOUSE the herein awarded percentage of SERVICE MEMBER’s “disposable retired pay,” and this Order, as to the DFAS, should be thusly construed.

Divorce Formula for Reserves

- Reserve Marital Formula (Most States):
  50% X (Retmt Points Earned Married / Total Retmt Points on Retirement) X DRP

In re Marriage of Poppe, 97 Cal.App.3d 1, 158 Cal.Rptr. 500 (CL.App.4thDist 1979); Bloomer v. Bloomer, 927 S.W.2d 118 (Tex.Ct.App.—Houston[14th Dist.] 1996, writ ref’d n.r.e.).
Divorce Formula for Reserves cont’d

- TEXAS Formula:
  
  \[ 50\% \times \left( \frac{\text{Retmt Pts Married}}{\text{Total Rtmt Pts on Divorce}} \right) \times \left( \frac{\{\text{SM’s entitlement to retired pay on date of divorce} \times 0.025 \times \text{Ttl Rtmt Pts on Div/360} \}}{\text{Current H3BP for SM’s Pay Grade/Longevity on Divorce}} \times \frac{\text{GRP at Retirement}}{\text{DRP}} \right) \]

TERA should apply here also

- SM VA/CRSC protection language for FS

- Active Duty COLA Entitlements for FS also applies

Mistakes that Prevent DFAS from Implementing your Military Retirement Division Order

- H3BP – every SM entering after 9/8/1986

- Failure to Identify Compliance with SCRA in DRO

- Failure to Identify that SM was a resident of the State (State Court had USFSPA jurisdiction over SM)
Suggested Language

b. SERVICE MEMBER has been domiciled in <City, County> County, South Dakota other than because of military assignment and has consented to the Court’s jurisdiction.

c. SERVICE MEMBER’s rights under the Servicemembers Civil Relief Act (50 U.S.C. App. §501 et seq.) have been observed.

Key Information to be in Order

Use their full names, if possible
De-identify their SSN, but list them; and state their Dates of Birth – i.e.:
- Jane Army (or A.) Green (SSN: ***-**-9999; October 10, 1972 [or 10/10/1972])
State Parties’ date of marriage and length of marital overlap with military service
State SM’s PEBD and length of total service on date of divorce

Key Information to be in Order cont’d

Make finding of:
- Percentage that is marital
- Percentage of marital being awarded to FS
- Remainder to SM
- Payment to FS by DFAS at max rate allowed by federal law (USFSPA)
Suggested Divorce Default Judgment Language

b. SERVICE MEMBER has been domiciled in <City, County> County, South Dakota other than because of military assignment pursuant to Your S.Dak. Statute § and this Court has personal jurisdiction over him and the military retirement earned by him during marriage.

c. SERVICE MEMBER’s rights under the Servicemembers Civil Relief Act (50 U.S.C. App. §501 et seq.) have been observed.

Contracts Between the Parties, DFAS Agreements

- Are they enforceable in Court and/or with DFAS
- When valid
- Court order better; agreed court order best
- Can enforce via suit for breach of contract

How to Enforce MRO Without SM’s Address

- Subpoenas to DFAS
  - Must be signed by Judge
  - Can be faxed or mailed to DFAS-FOIA Office
  - Give DFAS a date certain to produce (i.e., 30 days in your office)
  - Ask for physical address, mailing address for check, EFT information, along with Bank’s address and SM’s account #
- Subpoena to Bank once know its name and address
Part IV
Survivor Benefit Plan and Drafting your Decree to Provide Less than the Maximum Amount and/or Shift the Cost to the Former Spouse

Survivor Benefit Plan
- SBP = 10 USC 1447 *et seq.*
- Benefit at death of retiree or SM = 55% of base amount
- Base amount generally = SM's GRP
- Premium Cost/Mo. = 6.5% of base amt for "spouse/former spouse coverage"
- Benefits, disadvantages
- Be ready to explain to your judge
- Have Trial Exhibit doing so introduced

Survivor Benefit Plan Issues
- Former Spouse Beneficiary
  - NOT Spouse Beneficiary
- Only one SBP beneficiary class
  - FS or Spouse
  - FS & Children or Spouse & Children
Who Pays for the Benefit?

- Do nothing, SM pays most
- FS should pay all; she is the only one to benefit
  - Include FS payment language in the decree; or,
  - Adjust her percentage to compensate for cost paid by SM
- Cost is award of permanent non-taxed alimony to SM if FS not ordered to pay all premiums if SM fails to object!

Survivor Benefit Plan Cont’d

- Court can order SBP coverage (since 1986)
- Without it, payments to FS end at the retiree’s death
- Unitary – cannot divide, cannot share with SM’s NEW spouse!
- Premiums come “off the top” before DRP
  - Only if FS is a former spouse beneficiary of SBP
  - If SM designates current spouse SBP beneficiary, no deduct for premiums in calculation of FS share of DRP
- Avoid SGLI as alternative (Ridgway v. Ridgway, 454 U.S. 46, 102 S.Ct. 49, 70 L.Ed.2d 39 (1981))

Typical Clause?

- “Mary Doe shall receive 46.5% of all military retirement benefits of John Doe, including everything attributable to his service in the military towards a pension, and every pension benefit of his.”
- Does not award SBP former spouse coverage
Suggested SBP Clause

IT IS THEREFORE ORDERED AND DECREED that SERVICE MEMBER be and is hereby ORDERED to elect to designate FORMER SPOUSE as a "former spouse <and children> beneficiary" of SERVICE MEMBER’s SBP and shall complete and sign a DD Form 2656-1 so electing FORMER SPOUSE as a "former spouse <and children> beneficiary" and deliver the completed, signed form to FORMER SPOUSE coincident with the signing of this DRO.

IT IS FURTHER ORDERED AND DECREED that FORMER SPOUSE shall complete and sign a DD Form 2656-10 designating herself as a "deemed elected" "former spouse <and children> beneficiary" of SERVICE MEMBER’s SBP.

FS Pays 100% Language

FINDING

0. It is anticipated that, upon SERVICE MEMBER’s retirement from the U.S. <Branch of Service>, that a clarification order will necessarily be entered to then calculate FORMER SPOUSE’s actual entitlement to a share of SERVICE MEMBER’s retired pay, then being adjusted to provide for FORMER SPOUSE’s payment of all of the cost of the monthly SBP premium.

ORDER LANGUAGE

IT IS FURTHER ORDERED that the foregoing calculated percentage awarded FORMER SPOUSE shall further be reduced, as necessary, to provide for FORMER SPOUSE’s payment of all of the cost of the monthly SBP premium.

Life & Death

If representing Spouse—

Life: Specify share of pension

Death: If SM dies after divorce, SBP coverage to ‘Former Spouse’

“Mary shall be the former spouse beneficiary for/of John’s SBP.”
Survivor Benefit Plan

- Register the FS Client with DFAS within one year of date of divorce or it is BARRED!
- One bite at apple – if not addressed may be barred by res judicata -- split of State authority

Survivor Benefit Plan

- Remarriage before 55 suspends coverage and premium payments if DFAS advised of remarriage
- Remarriage and designation by new SM husband terminates former coverage
- If coverage was suspended and marriage terminated, can apply to have suspension lifted and benefits reinstated.

Uniform State Law Commission – Deployed Parents Visitation and Custody Act

- What is USL
- Is now “on the street”
- Has already been enacted by some States
“When you are really in over your head, who can ya’ call?”

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