

Military Divorce: Dividing the Pension

Vanessa N. Puhak
Sullivan & Hilscher Family Law
vanessa.puhak@ncfamilylaw.com

We are taking a road trip!



***10 U.S.C. 1408, that is!**

The Road Map



***10 U.S.C. 1408 [Uniformed Services
Former Spouses' Protection Act]**

and

***Ch. 29, Vol. 7b, Dept of Defense
Financial Management Regulation**



RESOURCES FOR YOU!

Silent Partner info-Letters at www.nclamp.gov > Publications

- SM Strategy
- Spouse Strategy
- Getting Pension Div'n Orders Honored by the Retired Pay Ctr
- Frozen Benefit Rule – 5 info-letters
- MPD Master Checklist

Flowchart - Frozen Benefit Rule

How to Divide the Military Pension



You Can't Go Thru...

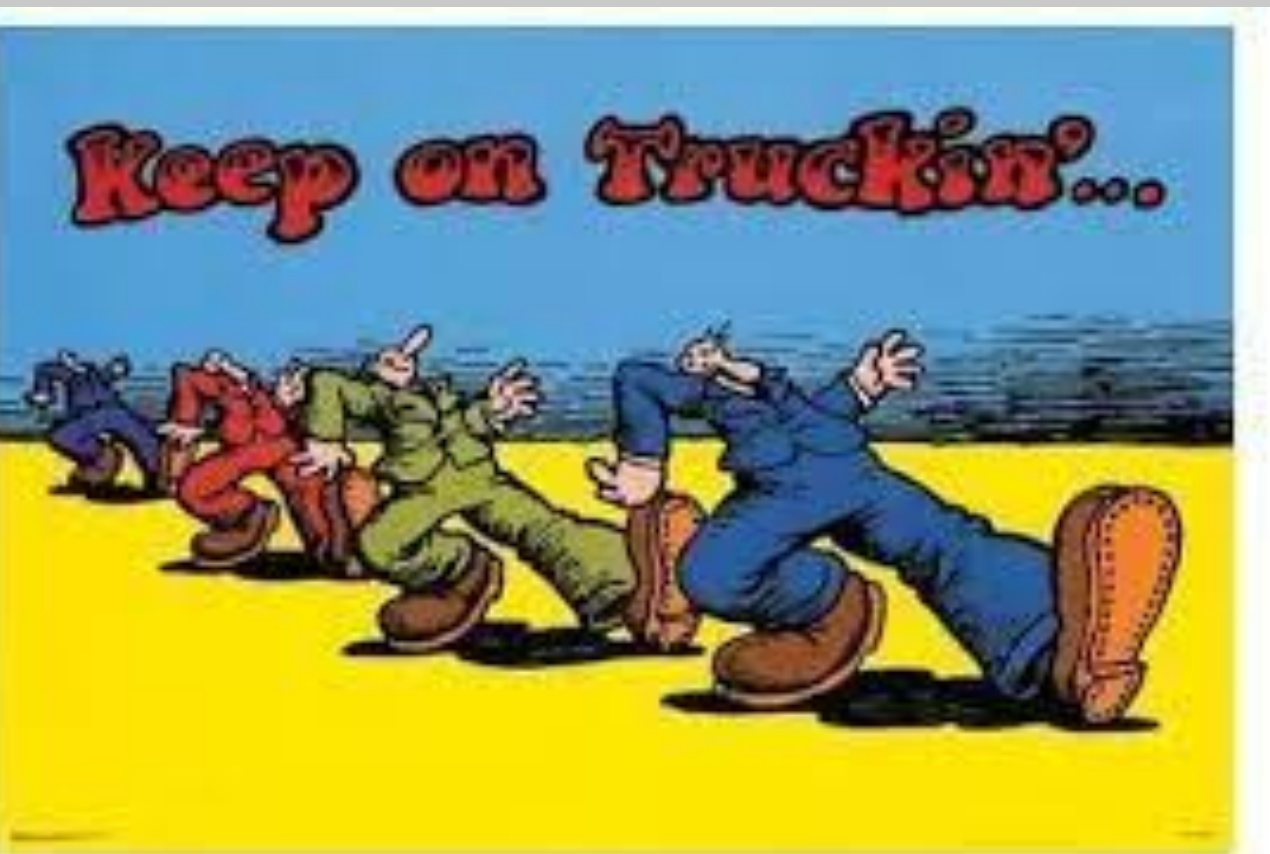


NO JURISDICTION!



Pension Div'n Jurisdiction

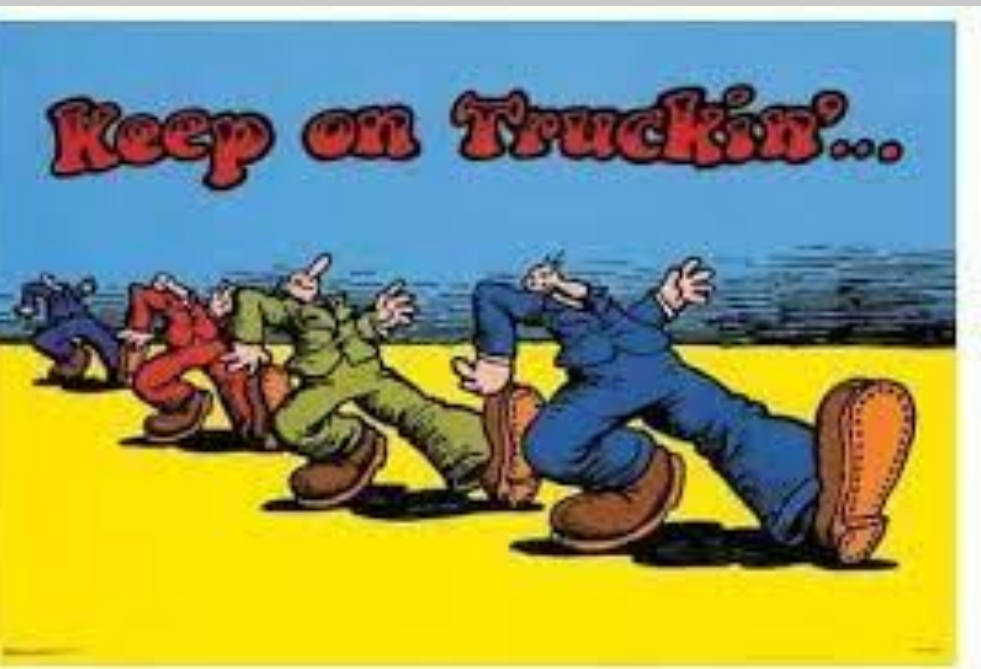
10 U.S.C. 1408(c)(4)



Pension Div'n Jurisdiction

10 U.S.C. 1408(c)(4)

Domicile of the SM/retiree



Domicile of servicemembers...

- Servicemembers Civil Relief Act – protects domicile for voting, tax purposes
- DD Form 2058 – state of tax residence for w'holding
- False domicile claims
- Costly to litigate in 2 states!

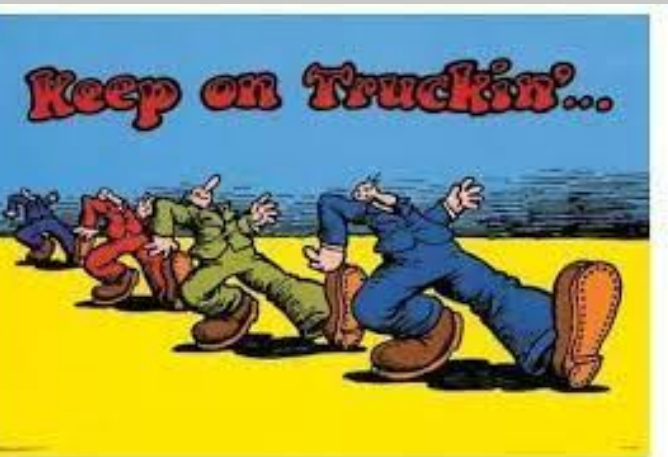


Pension Div'n Jurisdiction

10 U.S.C. 1408(c)(4)

Consent to the jurisdiction of the court

[any action by defendant which amounts to a gen'l appearance]



Getting to the
Good Stuff...



State Law or Federal Law?

*10 U.S.C. 1408 [Uniformed Services
Former Spouses' Protection Act]

and

*Ch. 29, Vol. 7b, Dept of Defense
Financial Management Regulation

N.C. Gen. Stat. § 50-20.1



N.C. Gen. Stat. § 50-20.1

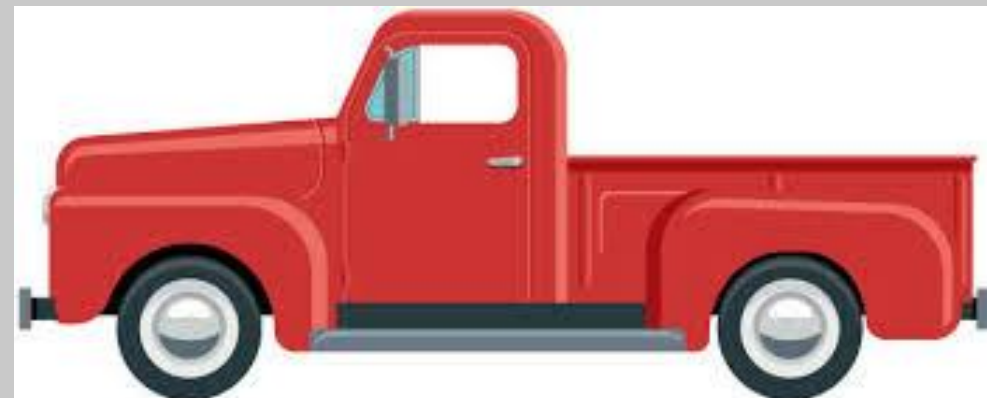
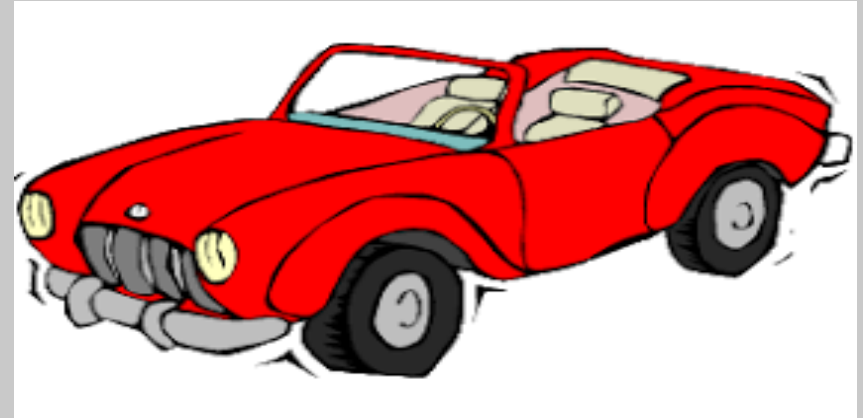
*When the amount of the benefit payable by the plan, program, system, or fund to the participant-spouse is determined in whole or part by the length of time of the participant-spouse's employment, the marital portion shall be determined **using the proportion of time the marriage existed (up to the date of separation of the parties) simultaneously with the total time of the employment** which earned the benefit subject to equitable distribution, **to the total amount of time of employment that earned the benefit** subject to equitable distribution. **********



$$50 \% \times \frac{17 \text{ years}}{22 \text{ years}^{***}}$$



Different Vehicles on Rte. 1408



Different Vehicles on Rte. 1408

Fixed Dollar Amount:

“Jane Doe gets \$500/mo. from John’s retired pay.”

[no COLAs!]





Percentage Clause – All variables are known [i.e., when John doe is already retired] –

“Jane gets 40% of John Doe’s Disposable Retired Pay”

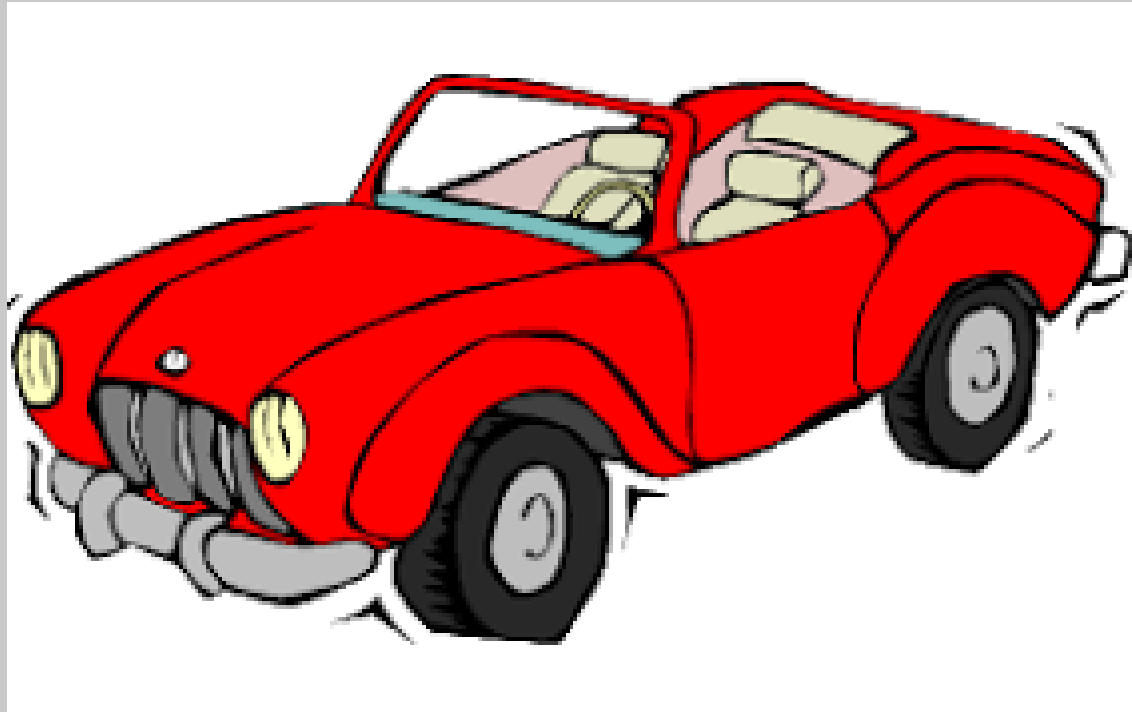
DIFFERENT VEHICLES ON RTE. 1408



Different Vehicles on Rte. 1408

Formula Clause:

“John pays Jane 50% of a fraction, with 240 months as numerator, and total military svc as denominator”

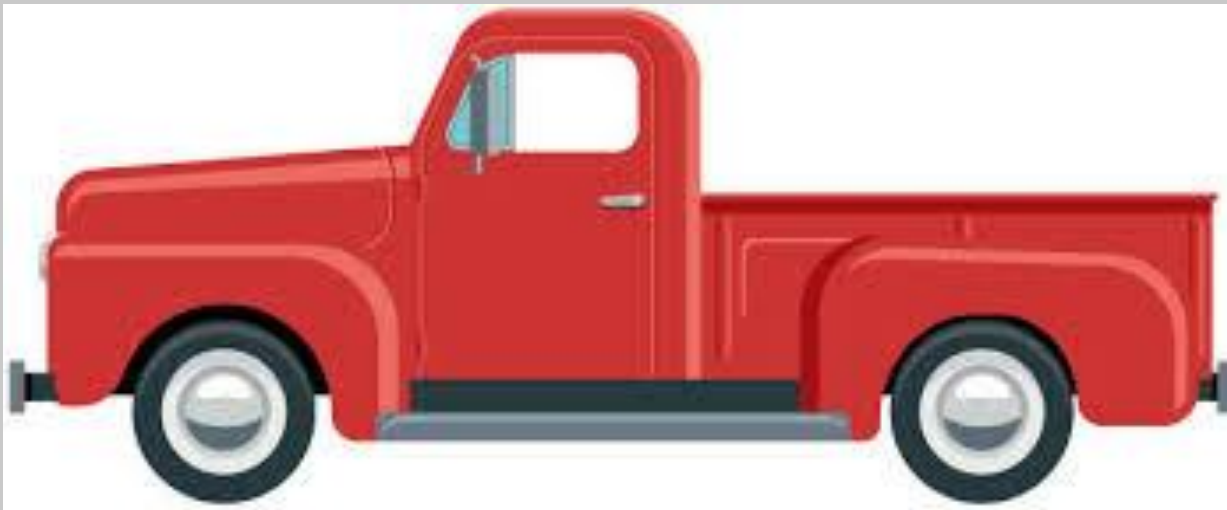


*If benefit is frozen, then denominator of the marital fraction may also be frozen depending on state law

Different Vehicles on Rte. 1408

Hypothetical Clause:

“Jane gets 50% of the military retired pay which John would have received if he'd retired as a major on July 31, 2020 with ret'd pay base of \$7,777 and 22 years of creditable service”



Cost-Of Living Adjustments = gradual increase in ret'd pay

Automatic with all clauses except **FIXED DOLLAR AMOUNT**



WHAT ABOUT COLAS?



HOW TO GET GARNISHMENT [PENSION-SHARE PMTS FROM RET'D PAY CENTER]



The “10/10 Rule”



ROAD CLOSED!

No “10/10 Rule” = no garnishment by
ret’d pay center

*for pension div’n

*as property



Basic info: What document can divide the pension?

- Decree of divorce...
- Or decree of legal separation
- Or sep. agreement [incorporated into div. decree] or N.G. Gen. Stat. 50-20.1(j)
- Or MPDO [military pension division order] incident to divorce/legal separation decree

"DIRECT PAY" ORDERS --

- PARTIES' ADDRESSES
- GRADE/RANK OF MILITARY MEMBER
- BRANCH OF SERVICE OF MEMBER
- S.C.R.A. RIGHTS PROTECTED

"DIRECT PAY" ORDERS

- 10 YRS OF MARRIAGE, OVERLAPPING 10 YRS OF SVC
- JURISDICTIONAL FINDINGS
- ENDS AT DEATH OF RETIREE OR SPOUSE, WHICHEVER
OCCURS FIRST
- PROSPECTIVE ONLY-- NO ARREARS

Pre-Filing Review?



Basic info: Details & Logistics

- Submission process

- Send to ret'd pay center [DFAS or USCG] a cert. copy of
 - divorce decree, and
 - division document [if not in div. decree]
- With DD Form 2293
- Also copy of W-4P [tax w'holding] and
- DFAS Form 1059 [direct deposit]

Basic info: Details & Logistics

- 90 days for processing from the later of:
 - Order submission date, or
 - Start of ret'd pay
- Interim pens. share pmts by retiree
- Garn. pmts = taxed to payee, excludable by payor



Road Closed => DETOUR

Alternative: use spousal support

- *no requirement of 10/10 overlap
- *make it non-modifiable if remarriage, or cohabitation, or chg of circumstances
- *non-taxable to former spouse!





“What’s the Speed Limit?”



Speed Limit

50% of DRP* = maximum that can
be withheld for prop. div'n
garnishment

60% if multiple orders [e.g., child
supt, alimony and pens.div.]

*DRP = Disposable Retired Pay



Speed Limit

Gross Ret'd Pay

- SBP* Premium
- VA waiver

= Disposable Ret'd Pay

*Survivor Benefit Plan =>



Disability Details

- Waiver of ret'd pay for VA disability \$
- VA is tax-free
- VA not subject to pension division – 10

U.S.C. 1408 (a)(4)(A)



Restored Retired Pay to the Rescue

- Restored Ret'd Pay = formerly **CRDP**
(Concurrent Retirement and Disability Pay)
- Available if $\geq 50\%$ disability rating
- Return of waived military retired pay



ALLOTMENTS

ALLOTMENT TYPE

INSURANCE
INSURANCE
INSURANCE

Payee

[REDACTED]

Amount

[REDACTED]

ARREARS OF PAY BENEFICIARY INFORMATION

THE FOLLOWING BENEFICIARIES ARE ON RECORD:

NAME

[REDACTED]

SHARE

[REDACTED]

RELATIONSHIP

[REDACTED]

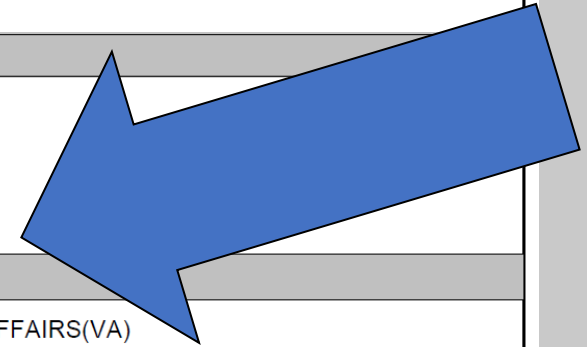
MESSAGE SECTION

BASED ON THE COMPENSATION AMOUNT YOU RECEIVE FROM THE DEPARTMENT OF VETERANS AFFAIRS(VA) AND YOUR RETIRED PAY, YOUR CONCURRENT RETIREMENT DISABILITY PAY(CRDP) AMOUNT IS \$2,122.00. PLEASE SEE www.dfas.mil/retiredmilitary.html FOR MORE INFORMATION ABOUT THE CRDP ENTITLEMENT.

Beneficiaries now have access to a more complete health record! TRICARE Online Patient Portal (www.TRICAREOnline.com) has a new look and recently added two features.

Encounter (Open) Notes and Documents allows you to view provider notes from clinic visits and scanned documents from external consults. You can also manage MTF appointments, request refills, view/download Health Records and receive appointment reminders.

THIS IS YOUR MONTHLY RETIREE ACCOUNT STATEMENT. IT SUMMARIZES THE STATE OF YOUR ACCOUNT AS OF THE DATE SHOWN. PLEASE REVIEW YOUR ADDRESS, BANKING, BENEFICIARY, PAY AND ALLOTMENT INFORMATION REGULARLY. FOR MORE INFORMATION ABOUT RETIRED PAY GO TO <http://www.dfas.mil/dfas/retiredmilitary.htm>



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



WHAT'S CRSC?

CRSC - Combat-Related Special Compensation [10 U.S.C. 1413a]

- *Purple Heart*, or --
- Armed conflict,
- Hazardous service
- Conditions simulating war, or
- Instrumentality of war



What's CRSC?

- Only for retirees who have waived pension for disability
- Represents the “combat-related” part of VA disability
- Must apply for it
- AND...



What's CRSC?

- CRDP stops when you elect CRSC!



CRSC Pay Statement

STATEMENT EFFECTIVE DATE APR 21, 2006		PAYMENT DATE MAY 01, 2006	SSN [REDACTED]
RETIREE'S NAME AND ADDRESS		HOW TO CONTACT US	
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES [REDACTED] [REDACTED] [REDACTED]		DEFENSE FINANCE AND ACCOUNTING SERVICE US MILITARY RETIREMENT 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 1-877-363-3677	
PAYMENT ADDRESS DIRECT DEPOSIT			
PAYMENT INFORMATION		ENTITLEMENT INFORMATION	
CRSC Amount	377.00	Retired Pay Before Deductions	2,746.00
CRSC Debt Deduction	0.00	Retired Pay Offset By DVA Compensation	757.00
CRSC Garnishment Deduction	0.00	CRSC Debt Balance	0.00
CRSC Net Pay	377.00	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.			

CRSC statement is at secure “myPay” website for retirees:
<https://myPay.dfas.mil>

Know the Basics

- Wording, logistics
- Documents
 - LES [Leave and Earnings Statement]
 - RAS [Retiree Account Statement]
- Discovery
- Get documents from govt through court order or judge-signed subpoena (ct. of competent j/d)

Leave-and-Earnings Statement

DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT														
ID	NAME (Last, First, MI)			SOC.SEC.NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVERED			
					O4	790401	20	888888	ARMY	4809	1-30 SEP 99			
ENTITLEMENTS			DEDUCTIONS			ALLOTMENTS			SUMMARY					
	Type	Amount	Type	Amount	Type	Amount								
A	BASE PAY	4566.60	FEDERAL TAXES	294.91	DISCRETIONARY ALT	525.00								
B	BAS	157.26	FICA-SOC SECURITY	283.13										
C	BAH	1368.00	FICA-MEDICARE	66.22										
D			SGLI FOR 200,000	16.00										
E			DENTAL	21.33										
F														
G														
H														
I														
J														
K														
L														
M														
N														
O														
TOTAL		6,091.86				525.00								
LEAVE	BF Bal	Ernd	Used	Cr Fwd	ETS	FED TAXES		WagePeriod	Wage YTD	M/S	Ex	Add Tax	Tax Ytd	
	52.5	30.0	14	68.5				4566.60	41099.40	M	09	.00	3341.71	
FICA TAXES	Wage Period	Soc Wage YTD	Soc Tax			YTD State TAXES	Cd	Wage Period	Wage YTD	M/S/N	Ex	Tax YTD		
	4566.60	41099.40	2548.			.98	WV	.00	.00	M	02	.00		
PAY DATA	BAH Type	BAH Depn	BAH Zip	Rent Amt	Share	Stat	JFTR	Depns	2d JFTR	BAS Type	Charity YTD	TPC	PACIDN	
	W/DBP	SPOUSE	22041	.00	1						.00		DEDOKEAA	
REMARKS YTD Entitlements: 54826.74 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-AMEDD.ARMY.MIL State of Residence for Tax Purposes 0827 (258)														
THE DFAS-IN CENTER DEVELOPED A NEW FEATURE FOR ACTIVE DUTY IDENTIFICATION NUMBER (PIN). ALL YOU NEED IS A PIN AND SSN CALL DSN 699-0299 OR COMMERCIAL 1-317-510-0299. ARMY PERSONNEL TO OBTAIN INFORMATION BY USING A PERSONAL AND A TOUCH TONE PHONE TO ACCESS YOUR LATEST PAY INFORMATION.														

RETIREE ACCOUNT STMT.

Gross pay,
VA waiver,
SBP premium, Taxable
income

RETIREE ACCOUNT STATEMENT

STATEMENT EFFECTIVE DATE
DEC 18, 2007

NEW PAY DUE AS OF
FEB 01, 2008

SSN [REDACTED]

PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES

MAJ JOHN [REDACTED] USA RET
[REDACTED]
[REDACTED] KY [REDACTED]

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

ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	3,675.00	3,675.00	FITW	323.73	347.80
VA WAIVER	401.18	240.71	ALLOTMENTS/BONDS	46.81	46.81
SBP COSTS	16.60	16.60			
TAXABLE INCOME	3,257.22	3,417.69			
			NET PAY	2,886.68	3,023.08

PAYMENT ADDRESS

DIRECT DEPOSIT

YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)

TAXABLE INCOME: 3,257.22
FEDERAL INCOME TAX WITHHELD: 323.73

TAXES

FEDERAL WITHHOLDING STATUS: MARRIED
TOTAL EXEMPTIONS: 00
FEDERAL INCOME TAX WITHHELD: 347.80

SURVIVOR BENEFIT PLAN (SBP) COVERAGE

SBP COVERAGE TYPE: SPOUSE ONLY ANNUITY BASE AMOUNT: 663.93
SPOUSE ONLY COST: 16.60 55% ANNUITY AMOUNT: 365.16
50% ANNUITY AMOUNT: 331.97
SPOUSE DOB: DEC 28, 1958

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 50% (\$ 331.97) AND 55% (\$ 365.16) 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.

Frozen Benefit Rule



10 U.S.C. 1408(a)(4)(B)



Affects all uniformed services pension div.
orders when:

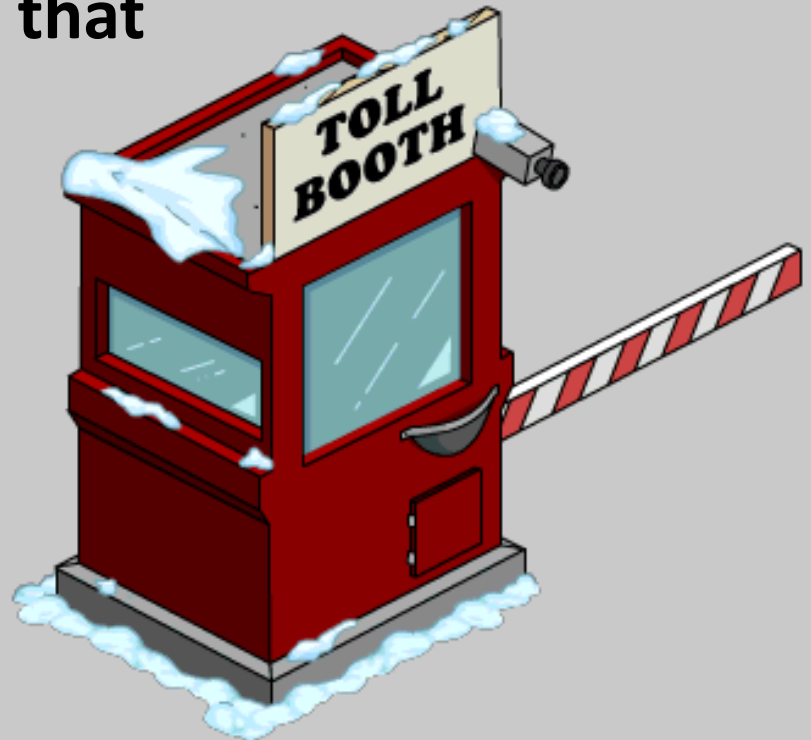
- *Divorce after 12/23/16, and
- *At divorce SM was not getting ret'd pay

**New
Construction**

“Frozen Benefit Rule”

- Benefit to be divided is frozen
- As of date of divorce
- Ret’d pay centers locked into that
Disposable Retired Pay
- As if SM retired then.

Parties cannot waive this.



“Frozen Benefit Rule”



Data required for MPDO –

- **HI-3 as of date of divorce**
- **Also years of service [or, for Guard/Reserve members, # of retirement points] at divorce**

“HIGH-3...??”

– What it is...

- **AVG OF HIGHEST THREE YEARS OF COMPENSATION**



- **BASED ON ACTIVE-DUTY PAY TABLES**
- **“NEW CONSTRUCTION” – get out your spreadsheet!**

**New
Construction**

“HIGH-3...??”

Ret'd pay center will not calculate for you!

- Not on the LES
- Figure it out from the raw data you get, such as—
 - copies of all LES's, or
 - transcript of data fm DFAS, or
 - spreadsheet, once you have rank and yrs of service for pay purposes, date of last promotion
- Details in the 5 Silent Partner infoletters on F.B.R.
 - “Frozen Benefit Rule – Finding the Facts”
 - “Military Pens Div and the F.B.R. – Nuts and Bolts”
 - Go to: www.nclamp.gov > Publications

Total Retirement Points??

- Annual ret. points stmt.
- Secure portal at Guard/Reserve HQ

A yellow diamond shape with a blue border, containing the text "New Construction".

**New
Construction**

“Frozen Benefit Rule” Resources

– DFAS:

- Sec. 8.0, Ch. 29, Vol. 7B of the DoDFMR
- Two sample orders, Fig. 1 & 2. BUT caution...
 - no SBP mentioned

– 5 Silent Partner Infoletters --

- “Fixing the Frozen Benefit Rule”
- “*The Big Freeze*: Finding the Facts”
- “All Clauses Considered: Writing the Frozen Benefit Award”
- “Mil. Pens. Div. and the Fr. Ben. Rule: Nuts & Bolts”
- “Rules, Remedies and Res Judicata”

[at www.nclamp.gov > PUBLICATIONS]

“Frozen Benefit Rule” and State Law

**...to the total amount of time of
employment that earned the benefit
subject to equitable distribution.**

“Frozen Benefit Rule” and State Law

N.G. Gen. Stat. 50-20.1 (d)

When a pension, retirement, or deferred compensation plan, program, system, or fund, or an applicable statute limits or restricts the amount of the benefit subject to equitable distribution by a State court, the award shall be determined using the proportion of time the marriage existed (up to the date of separation of the parties) simultaneously with the total time of the employment which earned the benefit subject to equitable distribution to the total time of employment, as limited or restricted by the plan, program, system, fund, or statute that earned the benefit subject to equitable distribution.

HOWELL V. HOWELL

U.S. SUPREME COURT

137 S.Ct. 1400 (2017)

- Issue = indemnification for “VA waiver”
- VA waiver:
 - When retiree elects VA disability compensation
 - for svc-connected wound, illness, injury or condition...



SBP = Survivor Annuity
- 10 USC 1447 *et seq.*



SURVIVOR BENEFIT PLAN

- Benefit = 55% of base amount
- Base = \$300 up to FULL ret'd pay



SURVIVOR BENEFIT PLAN

- DOWNSIDE:
Taxable income for
b/y
- UPSIDE: COLAs
each year (usually)



SURVIVOR BENEFIT PLAN

- Cost (fm retired pay) =
 - 6.5% of base amt for “spouse/former spouse coverage”
 - Guard/Reserve – up to abt. 10% of base amt



SBP Problem

- Cost = 6.5% for a/d retirement
- Cost = 10% for RCSBP
- Who's gonna pay for this puppy?
 - Mrs. Jane Doe, b/c it benefits her alone?
 - COL John Doe, b/c his own death benefit is FREE?



SBP Problem

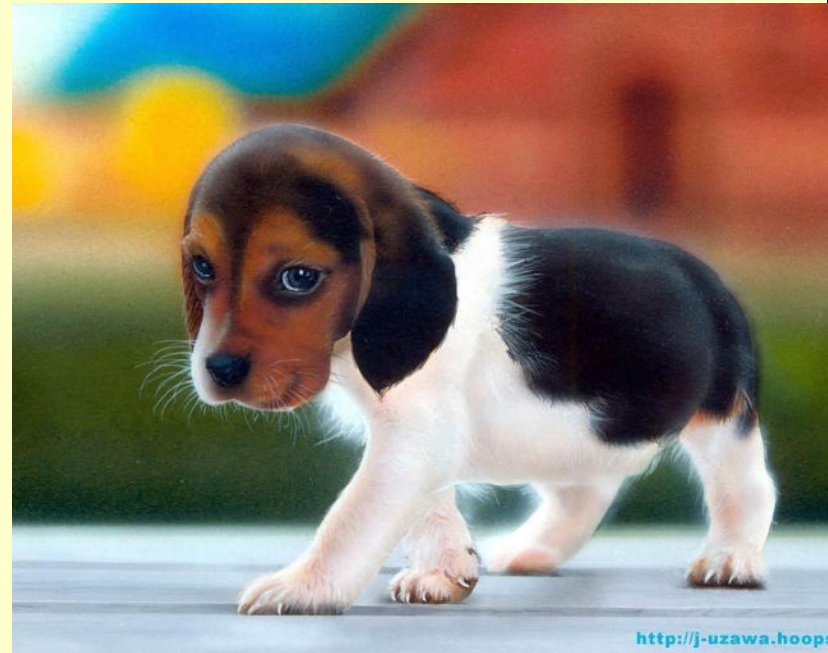
Who's gonna pay for this puppy?

– ***COST-SHIFTING TO FMR SPOUSE***

– Jane pays John each month

-A GOOD IDEA??-

Tell DFAS to do it?



<http://j-uzawa.hoop>

SBP Problem

Who's gonna pay for this puppy?

– *Cost-shifting to fmr spouse*

- Calculate reduction in Jane's share
- Abt 4-4.5% reduction in A/D cases
- Method shown: www.nclamp.gov at Silent Partner, "Mil. Pension Div'n – The Spouse's Strategy"



~~***“JANE DOE WILL RECEIVE 40% 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.”***~~

**“JOHN WILL ELECT JANE AS SBP FORMER-
SPOUSE BENEFICIARY W/ HIS FULL RET'D
PAY AS BASE AMT.”**

The “Three R Rule”

1. Requirement

2. Request

3. Register

The “Three R Rule”

- Requirement = CT ORDER

“John Doe will elect Jane Doe as former-spouse beneficiary for the Survivor Benefit Plan, with his full ret’d pay as the base amt.”

The “Three R Rule”

- Requirement
- Request = ELECTION
 - ❖ DD Form 2656-1 [signed by both parties]

The “Three R Rule”

- Requirement
- Request = ELECTION
 - ❖ DD Form 2656-10 for “deemed election
 - ❖ Used if the SM “*fails or refuses to make election*”
 - ❖ Signed by the fmr spouse

The “Three R Rule”

- Requirement
- Request
- **R**egistration – send to ret’d pay center:
 - ❖ the form +
 - ❖ cert. cy of divorce decree +
 - ❖ cert. cy of ct order for SBP

The “Three R Rule”

- Requirement
- Request
- **R**egistration – send to ret’d pay center:
 - ❖ the form +
 - ❖ cert. cy of divorce decree +
 - ❖ cert. cy of ct order for SBP

WITHIN THE DEADLINE!!

SURVIVOR BENEFIT PLAN

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



Dealing with Deadlines

MALPRACTICE TRAP

**Failure to timely register
means FS will not be
covered upon SM
preceding FS in death**

Associate Competent Co-Counsel!

- “Not just any lawyer”
- WING IT? ... or “Wingman” - - ??



Questions...



Vanessa Puhak

www.ncfamilylaw.com

vanessa.puhak@ncfamilylaw.com

