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DISTRICT COURT
CLARK COUNTY, NEVADA

[NAME],)	
)	
Plaintiff,)	
)	
vs.)	
)	
[NAME],)	CASE NO.
)	DEPARTMENT
Defendant.)	DOCKET

DECREE OF DIVORCE

TO USERS OF THIS FORM: Do a search and replace from "MEMBER" and "SPOUSE" to whatever is required by local rules -- to "Plaintiff" and "Defendant" or to the parties' names as appropriate to case. Be careful, though; sometimes, the words "member" or "spouse" are used descriptively below, and so should not be eliminated.

The above-entitled cause coming on regularly for trial on _____, 19__,
before the above-entitled court; Plaintiff appearing in person and with Plaintiff's attorney,
_____, ESQ., and the Defendant appearing by and through Defendant's attorney,
_____, ESQ., and the parties having each waived the making, filing, and service of

Findings of Fact and Conclusions of Law, and written notice of entry of Judgment, and the parties consenting to the jurisdiction of this court and the trial of this action, and the Court being fully advised in the premises, and finding that Plaintiff is a bona fide resident of the State of Nevada, and that this Court has jurisdiction over both of the parties hereto and of this action under both Chapter 125 of the Nevada Revised Statutes and 10 U.S.C. § 1408 *et seq.*, and that all applicable portions of the Soldier's and Sailor's Civil Relief Act of 1940 have been complied with by waiver or otherwise, and that _____ is entitled to the relief prayed for in said _____ upon the grounds therein, and that the parties were married on [DOM], in [POM], and that they remained married for more than ten years during MEMBER's creditable military service.

Below paragraph provides certain information necessary under federal law.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the bonds of matrimony heretofore and now existing between Plaintiff, [name], SSN _____, and Defendant, [name], SSN _____ be, and the same are hereby wholly dissolved, and an absolute Decree of Divorce is hereby granted, and the parties are hereby restored to the status of single, unmarried persons.

"All MRB" language--ignores Mansell; use the below paragraph for either pre- or post-retirement divorces, but note that the early retirement language is not necessary for post-retirement cases. For "beginning" blank, use "upon first eligibility for retirement," OR a specific date, OR negotiate some other triggering condition.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, beginning _____, SPOUSE shall receive [ALT1 the sum of\$ _____] [ALT2 ____%] per month from MEMBER's military retirement as her sole and separate property, payable from MEMBER's disposable retired or retainer pay, and that SPOUSE shall further receive ____% of any future cost of living increases in said retired or retainer pay, computed from the gross sum thereof. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" includes retired pay paid or to which MEMBER would be entitled for longevity of active duty and/or reserve component military service and all payments paid or payable under the provisions of Chapter 38 or Chapter 61 of Title 10 of the United States Code, before any statutory, regulatory, or elective deductions are applied. It also includes all amounts of retired pay MEMBER actually or constructively waives or forfeits in any manner and for any reason or purpose, including but not limited to any waiver made in order to qualify for Veterans Administration benefits, and any waiver arising from MEMBER electing not to retire despite being qualified to retire. It also includes any sum taken by MEMBER in addition to or in lieu of retirement benefits, including but not limited to exit bonuses, voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member, except that the percentage of such benefits payable to SPOUSE will have to be recalculated to take into account that less than 240 months of total service have accrued. All sums payable to SPOUSE as a portion of military retirement shall be payable from MEMBER's disposable retired or retainer pay to the extent that it is so restricted by law.

Use for Mansell compliance in a non-vested case. Attorneys for spouses will wish to omit the "when and if they vest" language. Member's attorneys will wish to delete the language including waived retirement benefits within the definition. Whether or not the "or which would have accrued" language is proper depends on whether state law in the issuing state provides for payment of benefits upon eligibility for retirement.

[Alt] IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE has an interest in the military retirement benefits accruing to MEMBER as a result of his service in the United States Armed Forces, when and if they vest, as her sole and separate property, equal to _____ (one half of ___ months of military service performed during marriage divided by 240 months of MEMBER's military service) of the sum payable at that time, plus a like percentage of all cost of living adjustment increases that accrue to said military retirement benefits thereafter, or which would have accrued if the retirement had been elected. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" means disposable retired pay as defined in 10 U.S.C. § 1408, and includes all amounts of retired pay MEMBER actually or constructively waives or forfeits by electing not to retire despite being qualified to retire. It also includes any sum taken by MEMBER in lieu of retirement benefits, including but not limited to exit bonuses, voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member, except that the percentage of such benefits payable to SPOUSE will have to be recalculated to take into account that less than 240 months of total service have accrued. All sums payable to SPOUSE as a portion of military retirement shall be payable from MEMBER's disposable retired or retainer pay to the extent that it is so restricted by law.

Alternative Paragraphs for alimony in lieu of MRBs (next two paragraphs) .

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE has a putative interest in the military retirement benefits accruing to MEMBER as a result of his service in the United States Armed Forces, as her sole and separate property, equal to _____% (one half of ___ months of military service performed during marriage divided by ___ months of MEMBER's military service) of the sum payable to MEMBER upon eligibility for retirement, plus a like percentage of all cost of living adjustment increases that accrue to said military retirement benefits thereafter, computed from the gross sum thereof. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" includes retired pay paid or to which MEMBER would be entitled for longevity of active duty and/or reserve component military service and all payments paid or payable under the provisions of Chapter 38 or Chapter 61 of Title 10 of the United States Code, before any statutory, regulatory, or elective deductions are applied. It also includes all amounts of retired pay Husband actually or constructively waives or forfeits in any manner and for any reason or purpose, including but not limited to any waiver made in order to qualify for Veterans Administration benefits, and any waiver arising from Husband electing not to retire despite being qualified to retire. It also includes any sum taken by MEMBER in addition to or in lieu of retirement benefits, including but not limited to exit bonuses, voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member, except that the percentage of such benefits payable to SPOUSE will have to be recalculated to take into account that less than 240 months of total service have accrued.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to the stipulation of the parties, SPOUSE shall have no interest whatsoever in said military retirement benefits as community property or her separate property, having waived said rights on condition and in exchange for a stipulated Order of this Court for an award of unmodifiable alimony for her support, beginning the first day of the first month following MEMBER's retirement or attainment of eligibility for retirement, [ALT beginning the first day of the first month following entry of this decree,] in an amount equal to ____% of the military retirement benefits to which MEMBER is or would be eligible upon retirement or eligibility therefor, [ALT2 in the sum of \$_____ per month,] plus ____% of all cost of living adjustment increases that accrue to said military retirement benefits thereafter (or which would accrue if such benefits were elected upon eligibility), which support obligation shall not be dischargeable in bankruptcy or otherwise.

The following paragraph states that Cost of Living Adjustments are specifically contemplated, and accrue to both the Member's and the Spouse's portions of the benefits.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the amount called for herein shall not be modifiable by the direct or indirect action of either party hereto, either by way of increase or decrease, except as expressly set forth herein. It is contemplated that future cost of living adjustments will be granted by the United States government, by means of which the gross military retirement benefits specified above will increase, thus raising the amount being paid to SPOUSE.

The following paragraph states the intention to provide a life-long benefit as a property settlement, which could be critical if the federal law is changed to otherwise allow for termination upon remarriage.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the payments called for herein from MEMBER's retired or retainer pay shall continue during the joint lives of the parties, and irrespective of the future marital status of either of them; they shall terminate only upon the death of either SPOUSE or MEMBER.

This provision provides for simultaneous payments to Member and Spouse, and states intention to comply with federal law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the appropriate military pay center shall pay the sums called for above directly to SPOUSE, to the extent permitted by law, at the same times as MEMBER receives his retired or retainer pay, and that this Decree is intended to qualify under the Uniformed Services Former Spouses Protection Act, 10 U.S.C. § 1408 *et seq.*, with all provisions to be interpreted to make the Decree qualify.

The following paragraph is not strictly necessary, but tends to make the Member feel better and clarifies intentions.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that with the exception of the amounts specifically awarded to SPOUSE, the balance of MEMBER's retired or retainer pay is awarded to MEMBER as his sole and separate property.

First fallback provision; payments by allotment if direct payment not made or insufficient.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if the amount paid by the military pay center to SPOUSE is less than the amount specified above, MEMBER shall initiate an allotment to SPOUSE in the amount of any such difference, to be paid from any federal entitlements due MEMBER, with said allotment to be initiated by MEMBER immediately upon notice of such difference, and making up any arrearages in installments not less in amount or longer in term than the arrearages accrued.

Second fallback provision; direct payment by Member for any month in which the order not yet in effect, or in which the pay center fails to provide the contemplated payment and allotment is not possible.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if in any month direct payment is not made to SPOUSE by the military paycenter, and no federal entitlement exists against which such an allotment may be initiated, or for whatever reason full payment by allotment is not made in that month, or if the amount paid through the allotment is insufficient to pay the difference specified above, MEMBER shall pay the amounts called for above herein directly to SPOUSE by

the fifth day of each month in which the military pay center and/or allotment fails to do so, beginning [ALT1 in _____, 19__] [ALT2 upon MEMBER's eligibility for retirement].

Third fallback provision; if military retirement merged with another retirement program, that other retirement program should honor this order to the extent possible.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if MEMBER takes any steps to merge his military pension with another retirement program of any kind, that retirement system, program, or plan is directed to honor this court order to the extent of SPOUSE's interest in the military retirement, and to the extent that the military retirement is used as a basis of payments or benefits under such other retirement system, program, or plan.

Fourth fallback provision; if Member's actions cause decrease of payments to Spouse, he must make up the difference.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if MEMBER takes any action that prevents, decreases, or limits the collection by SPOUSE of the sums to be paid hereunder, he shall make payments to SPOUSE directly in an amount sufficient to neutralize, as to SPOUSE, the effects of the action taken by MEMBER. Any sums paid to MEMBER that this court order provides are to be paid to SPOUSE shall be held by MEMBER in constructive trust until actual payment to SPOUSE.

Fifth fallback provision; reservation of jurisdiction by court to enter further, construing, or enforcing orders as required.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court shall retain jurisdiction to enter such further orders as are necessary to enforce the award to SPOUSE of the military retirement benefits awarded herein, including the recharacterization thereof as a division of Civil Service or other retirement benefits, or to make an award of alimony (in the sum of benefits payable plus future cost of living adjustments) in the event that MEMBER fails to comply with the provisions contained above requiring said payments to SPOUSE by any means, including the application for a disability award or filing of bankruptcy, or if military or government regulations or other restrictions interfere with payments to SPOUSE as set forth herein, or if MEMBER fails to comply with the provisions contained above requiring said payments to SPOUSE.

The following paragraph is a safeguard paragraph intended to allow relatively painless discovery from the military pay center in the event further information is necessary to come up with an enforceable order. It is probably only necessary in cases in which the Member is still in service on the date of divorce, so that some information is not known at that time.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that MEMBER has waived any privacy or other rights as may be required for SPOUSE to obtain information relating to MEMBER's date of retirement, last unit assignment, final rank, grade, and pay, present or past retired pay, or other such information as may be required to enforce the award made herein, or required to revise this order so as to make it enforceable.

The following boilerplate paragraph is required by the federal Act.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all applicable portions of the Soldier's and Sailor's Civil Relief Act of 1940, as to division of retired or retainer pay, have been complied with by waiver of MEMBER or otherwise.

The following paragraph elects the Spouse as the irrevocable beneficiary of the Survivor's Benefit Plan benefits at the full base amount.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE is and shall be deemed as the irrevocable beneficiary of the survivor's benefit plan ("SBP") through MEMBER's military retirement as the former spouse of MEMBER, and MEMBER shall execute such paperwork as is required to make or extend the election of SPOUSE as said beneficiary, and shall do nothing to reduce or eliminate that benefit to SPOUSE. MEMBER shall elect the former spouse-only option and shall select as the base amount the full amount of monthly retired pay.

The following paragraph elects the Spouse as the irrevocable beneficiary of the Survivor's Benefit Plan benefits at a base amount sufficient to cover the spousal interest, but no more.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE is and shall be deemed as the irrevocable beneficiary of the survivor's benefit plan ("SBP") through MEMBER's military retirement as the former spouse of MEMBER, and MEMBER shall execute such paperwork as is required to make or extend the election of SPOUSE as said beneficiary, and shall do nothing

to reduce or eliminate that benefit to SPOUSE. MEMBER shall elect the former spouse-only option and shall select as the base amount the higher of: (1) the minimum permissible SBP amount; or (2) a sum of monthly retired pay which, when multiplied by 55%, will yield the same dollar sum as is paid to SPOUSE during the parties' lifetimes under the terms of this order.

The below paragraph attempts to allocate the cost of the SBP plan to the Spouse. It is **not** required, but may be used where the parties have negotiated, or the court has ordered, that the Spouse is to be responsible for the entirety of the SBP premium. The primary clause is NOT currently considered enforceable by the Cleveland pay center, so its use may require the contemplated monthly reimbursements.

PRACTICE TIP: If you DO intend to allocate the cost of the SBP to the Spouse consider, as an alternative to the paragraph set out below, calculating the cost of the premium and deducting it from the Spouse's share of the retirement percentage or dollar sum directly. To do so, if the spousal share is a percentage, calculate the cost of desired coverage, establish the percentage of the total military retirement that the dollar sum equals, and then deduct the proper percentage from the spousal share. The remaining dollar sum of the total benefits can be expressed as a percentage that should remain constant despite future COLAs. This method of dealing with the problem is probably preferable in most cases: it does not require "reimbursements" and minimizes the parties' future direct financial dealings.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the premium for said SBP shall be deducted by the military pay center from the amounts otherwise payable to SPOUSE as her portion of the military retirement as specified above. Should said deduction be impossible, for whatever reason, SPOUSE shall reimburse MEMBER for the cost of SPOUSE's SBP coverage to the extent that MEMBER does not receive retired pay because of that coverage. Unless it is established that MEMBER pays a different sum for SPOUSE's coverage, the sum of reimbursement shall be calculated as follows: (The amount of the SBP premium) x (1 - [SPOUSE's percentage of

the military retirement benefits]). The obligation for reimbursement shall exist for each month in which MEMBER incurs a cost for SPOUSE's SBP coverage, beginning ten days after SPOUSE is notified in writing that MEMBER has incurred the expense of maintaining SPOUSE as said irrevocable beneficiary.

The following is a paragraph intended to allow waiver of the SBP by the Spouse and its replacement by a private insurance policy where financially reasonable; the Member is required to cooperate. Note that, as written, the paragraph does not indicate who is to pay for such replacement coverage; presumably, counsel will have this term mirror the responsibility for the SBP premiums.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE shall have the right to waive her interest in said SBP as specified in the immediately preceding paragraph, and shall be permitted to obtain other insurance coverage on MEMBER's life, in such sums as she deems appropriate to secure SPOUSE's insurable interest. In the event SPOUSE makes such an election, MEMBER shall sign such documents or perform such other acts as are necessary to allow SPOUSE to secure such insurance coverage on his life, including complying with a request for a physical examination, if necessary.

Use the following paragraph if: (1) the Member has already retired; (2) the SBP was NOT elected at the time of retirement; (3) it is desired to have the SBP in effect for the Spouse in the future, if possible. Note that, as written, the following paragraph does not allocate the SBP premium cost (see comments above).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the next open enrollment period, if any, MEMBER shall elect the Survivor's Benefit Plan survivor benefit annuity associated with his military retirement and shall designate SPOUSE as the named beneficiary thereof.

After this point, the user should include whatever non-military-related divorce clauses are necessary to the case.

DATED AND DONE in Las Vegas, Nevada, on _____.

DISTRICT JUDGE

Submitted by:
LAW OFFICE OF MARSHAL S. WILLICK, P.C.

By: _____
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APPROVED AS TO FORM AND CONTENT:

By: _____
[NAME], Esq.
Nevada Bar # _____
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Las Vegas, NV 891
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