

**MILITARY RETIRED PAY, LUMP-SUM EQUIVALENTS* AT RETIREMENT, AND ANNUAL DEPOSIT
NECESSARY TO ACCUMULATE THE LUMP-SUM EQUIVALENT* FOR NON-DISABILITY RETIREMENTS**

Retired Pay Grade	Retirement After 20 Years				Retirement After 30 Years			
	Monthly Retired Pay	Lump-Sum Equivalents	Monthly Deposits	Annual Deposits	Monthly Retired Pay	Lump-Sum Equivalents	Monthly Deposits	Annual Deposits
COMMISSIONED OFFICERS								
O-10	6,056	1,810,666	3,525	42,306	9,069	2,085,846	2,040	24,480
O-9	5,477	1,488,573	3,183	38,197	8,803	2,017,893	1,874	22,488
O-8	5,189	1,410,299	3,016	36,189	7,976	1,828,412	1,768	21,456
O-7	4,893	1,275,490	2,727	32,730	7,075	1,621,367	1,586	19,034
O-6	3,750	1,019,188	2,179	26,153	6,214	1,424,192	1,333	16,718
O-5	3,261	891,730	1,907	22,882	5,070	1,102,243	1,117	13,400
O-4	2,866	779,939	1,600	19,888	4,293	985,400	954	11,566
O-3	2,455	607,235	1,427	17,122	3,883	844,288	825	9,900
O-2	1,804	480,302	1,046	12,551	2,707	620,651	507	7,283
O-1	1,424	387,024	828	9,931	2,136	485,655	470	5,747
COMMISSIONED OFFICERS WITH: 1,460 POINTS TOWARDS A RESERVE RETIREMENT; OR 4 YEARS OF ACTIVE SERVICE, AS AN ENLISTED MEMBER AND/OR WARRANT OFFICER								
O-3E	2,520	712,060	1,523	18,272	3,930	900,910	381	10,573
O-2E	2,080	588,053	1,215	14,576	3,135	718,865	703	8,434
O-1E	1,768	480,518	1,028	12,330	2,652	607,942	505	7,135
WARRANT OFFICERS								
W-5	2,660	726,337	1,658	19,891	4,435	1,016,676	994	11,932
W-4	2,472	671,855	1,437	17,240	4,084	936,213	916	10,987
W-3	2,178	591,950	1,206	15,130	3,537	810,819	783	9,516
W-2	1,921	522,101	1,116	13,397	3,077	705,589	690	8,278
W-1	1,707	480,245	1,027	12,323	2,651	607,713	594	7,132
ENLISTED MEMBERS								
E-9	2,210	591,268	1,264	15,172	3,791	850,613	832	9,982
E-8	1,907	510,194	1,091	13,092	3,235	725,774	710	8,518
E-7	1,670	446,787	955	11,465	2,891	648,587	634	7,612
E-6	1,404	375,623	803	9,639	2,107	472,706	462	5,548
E-5	1,183	316,407	677	8,121	1,775	396,322	369	4,674
E-4	945	252,823	541	6,483	1,418	318,129	311	3,734
E-3	782	211,890	453	5,437	1,189	266,753	261	3,131
E-2	668	178,715	382	4,586	1,003	225,024	220	2,641
E-1	595	156,462	341	4,092	895	200,784	195	2,357

Note: As a result of certain provisions for advancement on the retired list or under the "Tower Amendment" some individuals would receive amounts differing from those shown above. Table is based on DIEMS before September 8, 1980 and is calculated using final pay formula. Active duty basic pay cap of 12,133.20 per month levels out retired pay in upper grades. *The lump-sum-equivalent is the amount of money required to be on hand at the time of retirement to pay a lifetime annuity that increases with inflation at 3.0% annually. The interest rate used in discounting to the present value is 6.25%, resulting in what is commonly referred to as a real interest rate of 3.25%. Longevity is based on military specific tables that assume an entry age of 23 for commissioned officers and warrant officers and 20 for enlisted.

Warning: These figures should not be used in property settlements.

As of January 1, 2004

[2]

CLOSING FILE CHECKLIST FOR MILITARY RETIREMENT BENEFITS CASES

- ☐ Be familiar with the two federal rules that work with, and partly supersede, state law
 - ☐ 10 U.S.C. § 1408
 - ☐ 32 C.F.R. § 63.6
- ☐ Ensure that you have jurisdiction, *both* under your state law *and* under federal law
 - ☐ Be aware that your state court must have jurisdiction over the service member by reason of residence (*other* than because of military assignment), domicile, or consent to the jurisdiction of the court
 - ☐ Be aware of some differences among courts in what constitutes "consent"; for most it is any general appearance, but for at least one other it means consent to litigation of that particular asset
 - ☐ NEVER take default against an out-of-state military member and seek to divide the retirement benefits; you will probably end up with an unenforceable order that may not be "fixable" in any court anywhere
 - ☐ Be sure the marriage *overlapped* the member's military service by at least ten years during creditable military service
 - ☐ If not, you cannot get the military pay center to send the spousal share of a property award directly to the former spouse
 - ☐ If you do not have a ten-year overlap of marriage and service, consider getting an alimony award instead, since that is directly payable irrespective of length of overlap
- ☐ Your order should recite certain necessary "magic language"
 - ☐ Compliance with the Soldier's and Sailor's Civil Relief Act
 - ☐ The name and Social Security Number of both the member and the former spouse
- ☐ Define "Military Retirement Benefits" the way you really mean to
 - ☐ If you mean something other than current definition of "disposable pay," say so
 - ☐ Make sure that you clearly state intention regarding future cost of living adjustment increases to the military retired pay
 - ☐ State the spousal portion of the retired pay as a percentage of the total benefit or a fixed dollar sum
 - ☐ Be careful not to mix fixed dollar awards and percentages, and be aware that cost of living adjustments may not accrue to fixed dollar awards
 - ☐ Realize that the definition of "disposable pay" is sometimes changed, and may or may not be what your state court *thinks* it is dividing
- ☐ Remember that military retired pay can be used for payment of child support and alimony as *well* as divided as property
- ☐ Follow up *after* the divorce by serving the order on the military pay center
 - ☐ Service must be made *only* by certified mail, return receipt requested
 - ☐ The court order *must* be certified within 90 days of service on the military pay center
- ☐ If the member is still on active duty, provide for possible future contingencies
 - ☐ Provide for what division will be made, and when, if the member takes an early retirement or elects an alternate benefit such as the Special Separation Benefit, Variable Separation Incentive, or 15-year retirement
 - ☐ In states (such as California) that provide for division upon eligibility for retirement, provide for member's possible service *after* eligibility for retirement by requiring personal payments by member until actual retirement

- ☐ Provide for whether alimony should be possible if the member takes a disability retirement and therefore reduces or eliminates the regular retired pay that could be divided
 - ☐ This item also applies even if the member has *already* retired, since members can apply for post-retirement disability ratings
- ☐ If there is a disability, realize that a disability percentage does *not* directly translate into a percentage of total retired pay
- ☐ Provide for possibility of any military retired pay "rolled over" into Civil Service retirement or other pension, including any "dual receipt" limitations involved in other federal service
 - ☐ Again, this item also applies to divorces occurring after retirement
- ☐ Provide for a reservation of jurisdiction to correct the form of order to comply with intentions in case statutes change or the member's service takes an unexpected turn
- ☐ Ensure that you provide for disposition of the Survivor's Benefit Plan
 - ☐ The benefit is *not* divisible between a present and former spouse; there can only be one beneficiary
 - ☐ State courts have authority to determine whether spouse is to remain post-divorce beneficiary of the survivorship interest
 - ☐ The *amount* of the benefit can be varied, by basing it upon the full base pay amount or some lesser sum
 - ☐ Be sure you separately serve the proper office at the military pay center with a deemed election of the former spouse as beneficiary within one year of the date of divorce, or the spouse gets no survivorship benefits no matter what the decree says
- ☐ Obtain information regarding military-related benefits
 - ☐ I.D. cards, CHAMPUS insurance benefits and base and commissary privileges are determined according to whether the member served for twenty years, was married for 20 years, and those two periods *overlapped* by 20 years
 - ☐ If a former spouse remarries, the medical benefits are lost permanently even if the later marriage ends

[3]

DECD

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DISTRICT COURT

CLARK COUNTY, NEVADA

) CASE NO:
) DEPT NO:
)
Plaintiff,) FAMILY COURT DIVISION
vs.)
) DATE OF TRIAL: N/A
) TIME OF TRIAL: N/A
)
Defendant.)
_____)

DECREE OF DIVORCE

[USE THIS FOR SUMMARY DISPOSITION CASES]

This matter was submitted to the Court for Summary Disposition of Divorce, with both parties having consented to this Court's jurisdiction. The Court was fully advised as to the law and the facts of the case, and finds that: the parties were married on **[Date Of Marriage]**, in **[Place Of Marriage]**; this Court has complete jurisdiction in the premises, both as to the subject matter and the parties, under both Chapter 125 of the Nevada Revised Statutes and 10 U.S.C. § 1408 *et seq.*; the Plaintiff is an actual and bona fide resident of the County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks immediately preceding the commencement of this action; all of the jurisdictional allegations contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of Divorce from the

Defendant on the ground as set forth in Plaintiff's Complaint; and Defendant having answered has waived Findings of Fact, Conclusions of Law, and written Notice of Entry of Judgment in said cause;

[USE THIS FOR A CASE THAT WENT TO TRIAL]

This matter was tried before the Honorable _____, District Court Judge, Family Division, on _____, 19____. Plaintiff, _____, appeared personally and was represented by _____
_____. Defendant, _____, appeared personally and was represented by _____
_____.

The Court was fully advised as to the law and the facts of the case, after hearing the testimony of the parties and their respective witnesses and argument of counsel, and finds that: the parties were married on **[Date Of Marriage]**, in **[Place Of Marriage]**; this Court has complete jurisdiction in the premises, both as to the subject matter and the parties, under both Chapter 125 of the Nevada Revised Statutes and 10 U.S.C. § 1408 *et seq.*; the Plaintiff is an actual and bona fide resident of the County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks immediately preceding the commencement of this action; all of the jurisdictional allegations contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of Divorce from the Defendant on the ground as set forth in Plaintiff's Complaint; and Defendant having answered has waived Findings of Fact, Conclusions of Law, and written Notice of Entry of Judgment in said cause;

[USE THIS FOR MILITARY CASE/SUMMARY DISPOSITION]

This matter was submitted to the Court for Summary Disposition of Divorce, with both parties having consented to this Court's jurisdiction. The Court was fully advised as to the law and the facts of the case, and finds that: this Court has complete jurisdiction in the premises, both as to the subject matter and the parties under both Chapter 125 of the Nevada Revised Statutes and 10 U.S.C. § 1408 *et seq.*; all applicable portions of the Soldier's and Sailor's Civil Relief Act of 1940 have been complied with by waiver

or otherwise; the Plaintiff is an actual and bona fide resident of the County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks immediately preceding the commencement of this action; all of the jurisdictional allegations contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of Divorce from the Defendant on the ground as set forth in Plaintiff's Complaint; and Defendant having answered has waived Findings of Fact, Conclusions of Law, and written Notice of Entry of Judgment in said cause; the parties were married on **[Date Of Marriage]**, in **[Place Of Marriage]**, and that they remained married for more than ten years during _____'s creditable military service.**[DELETE THIS SENTENCE IF IT IS NOT TRUE]**

[USE THIS FOR MILITARY CASE THAT WENT TO TRIAL]

This matter was tried before the Honorable _____, District Court Judge, Family Division, on _____, 19___. Plaintiff, _____, appeared personally and was represented by _____
_____. Defendant, _____, appeared personally and was represented by _____
_____.

The Court was fully advised as to the law and the facts of the case, after hearing the testimony of the parties and their respective witnesses and argument of counsel, and finds that: this Court has complete jurisdiction in the premises, both as to the subject matter and the parties under both Chapter 125 of the Nevada Revised Statutes and 10 U.S.C. § 1408 *et seq.*; all applicable portions of the Soldier's and Sailor's Civil Relief Act of 1940 have been complied with by waiver or otherwise; the Plaintiff is an actual and bona fide resident of the County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks immediately preceding the commencement of this action; all of the jurisdictional allegations contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of Divorce from the Defendant on the ground as set forth in Plaintiff's Complaint; and Defendant having answered has waived Findings of Fact, Conclusions of Law, and written Notice of Entry of Judgment in said cause; the parties were married on **[Date Of Marriage]**, in **[Place Of Marriage]**, and that they remained married for

more than ten years during _____'s creditable military service. **[DELETE THIS SENTENCE IF IT IS NOT TRUE].**

[USE THIS FOR DEFAULT DIVORCE]

This matter was submitted to the Court for Summary Disposition of Divorce. The Defendant was duly and regularly served with a copy of the "*Summons*" and "*Complaint for Divorce*" on **[DATE OF SERVICE]**, and failed to answer or otherwise plead herein. More than twenty (20) days, exclusive of service, has expired since the Defendant was served, and no further time to answer or plead was requested or granted. Default was regularly entered on **[DATE]**, for failing to answer or make a defense to Plaintiff's Complaint.

The Court was fully advised as to the law and the facts of the case, and finds that: the parties were married on **[Date Of Marriage]**, in **[Place Of Marriage]**; this Court has complete jurisdiction in the premises, both as to the subject matter and the parties, under both Chapter 125 of the Nevada Revised Statutes and 10 U.S.C. § 1408 *et seq.*; the Plaintiff is an actual and bona fide resident of the County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks immediately preceding the commencement of this action; all of the jurisdictional allegations contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of Divorce from the Defendant on the ground as set forth in Plaintiff's Complaint; the Defendant has waived his right to Findings of Fact, Conclusions of Law and written Notice of Entry of Judgment in this action as he has failed to respond herein;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the bonds of matrimony existing between Plaintiff, _____ ("_____"), SSN: _____, and Defendant, _____ ("_____"), SSN: _____, be, and the same are wholly dissolved, and an absolute Decree of Divorce is hereby granted to _____, and each of the parties is restored to the status of a single, unmarried person.

“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 SPOUSE’s 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 (except for deductions because of an election to provide a survivor benefit annuity to SPOUSE). 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, or reduction in pay or benefits because of other federal employment, 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, or reduction in pay or benefits because of other federal employment. 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). Note that the language used in these paragraphs varies depending upon whether or not the Member has already attained eligibility for retirement.

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 (except for deductions because of an election to provide a survivor benefit annuity to SPOUSE). 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, or reduction in pay or benefits because of other federal employment, 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 [ALT would have had to have been] 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 (or any other form of compensation attributable to separation from military service), [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. If MEMBER departs service prior to the accrual of 240 months of creditable service, the percentage payable to SPOUSE shall be recalculated to take into account that less than 240 months of total creditable service accrued.

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 pay center, 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 as set out above, 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 (by application for or award of disability compensation, combination of benefits with any other retired pay, waiver for any reason, including as a result of other federal service, or in any other way), 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. For cases in which alimony in lieu of retirement benefits was awarded, substitute "sums" for "military retirement benefits" in the first sentence, and phrase the reservation of jurisdiction as one to make a further award of alimony in the event that the Member does not comply with the terms as set out.

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.

**[IF ONLY ONE CHILD AT ISSUE, DO SEARCH FOR CHILDREN AND CHANGE TO CHILD
*** BE SURE YOU DON'T CHANGE THE WORDING THE STATUTORY LANGUAGE]**

*******JOINT LEGAL CUSTODY*******

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties shall have joint legal custody of their minor children, to wit: _____, born _____, and _____, born _____.

The parties agree that joint legal custody entails the following:

Neither parent shall do anything which shall estrange the child[ren] from the other parent or impair the natural development of the child[ren]'s love and respect for each of the parents, or disparage the other parent or undermine the parental authority or discipline of the other's household. Additionally, each parent shall instruct their respective family and friends that no disparaging remarks are to be made regarding the other parent in the presence of the child[ren]. Neither parent shall use contact with the child[ren] as a means of obtaining information about the other parent. The parents shall consult and cooperate with each other in substantial questions relating to religious upbringing, educational programs, significant changes in social environment, and health care of the child[ren].

The parents shall have access to medical and school records pertaining to their child[ren] and shall jointly consult, when possible with any and all professionals involved with the child[ren].

All schools, health care providers, day care providers, and counselors shall be selected by the parties jointly. In the event that the parties cannot agree to the selection of a school, the child[ren] shall be maintained in the present school pending mediation and/or further Order of the Court.

Each parent shall be empowered to obtain emergency health care for the child[ren] without the consent of the other parent. Each parent shall notify the other parent as soon as reasonably possible of any illness requiring medical attention, or any emergency involving the child[ren].

Each parent shall provide the other parent, upon receipt, information concerning the well-being of the child[ren], including, but not limited to, copies of report cards; school meeting notices; vacation schedules; class programs; requests for conferences; results of standardized or diagnostic tests; notice of activities involving the child[ren]; samples of school work; order forms for school pictures; and all communications from health care providers. The parents shall also exchange the names, addresses and telephone numbers of all schools, health care providers, regular day care providers, and counselors who have contact with their child[ren].

Each parent shall provide the other parent, upon receipt, information concerning school, athletic, church, and social events in which the child[ren] participate[s]. Both parents may participate in activities for the child[ren], such as open house, attendance at an athletic event, etc.

Each parent shall provide the other parent with the address and telephone number at which the minor child[ren] reside[s], and shall notify the other parent within five (5) days prior to any change of address and provide the telephone number as soon as it is assigned.

Each parent shall provide the other parent with a travel itinerary and, whenever reasonably possible, telephone numbers at which the child[ren] can be reached whenever the child[ren] will be away from the parent's home for any period in excess of two days.

Each parent shall be entitled to reasonable telephone communication with the child[ren]. Each parent is restrained from unreasonably interfering with the child[ren]'s right to privacy during such telephone conversations.

Should either parent require child care to be provided by someone other than himself or herself for a period of six (6) hours or more while the child[ren] is [are] in his or her physical care, the other parent shall be advised and given the opportunity to provide such care for the child[ren] before other arrangements are made for such child care.

*******JOINT PHYSICAL CUSTODY*******

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ and _____ shall share joint physical custody of their minor children, subject to the following weekly timeshare schedule:

_____ **will have the minor child in her custody:**

- 1.
- 2.

_____ **will have the minor child in his custody:**

- 1.
- 2.

*****PRIMARY PHYSICAL CUSTODY*****

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ shall maintain primary physical custody of the children, subject to _____ exercising specified visitation on _____.

*****HOLIDAYS*****

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following holidays and special times shall take precedence over the regularly scheduled visitation:

HOLIDAYS:

1. **EASTER VACATION OR SPRING BREAK:** Easter/Spring Break shall be defined as beginning at 6:00 p.m. the day school is released until 6:00 p.m. the day before school resumes. _____ shall have the children in odd-numbered years and _____ shall have the children in even-numbered years.

2. **SUMMER VACATION:** In even-numbered years, _____ shall have the children from the time school is released for six consecutive weeks, with _____ having the children the remainder of the summer until the day before school resumes at 6:00 p.m. In odd-numbered years, _____ shall have the children from the time school is released for six consecutive weeks, with _____ having the children the remainder of the summer until the day before school resumes at 6:00 p.m.

3. **THANKSGIVING VACATION:** Thanksgiving shall be defined as beginning at 6:00 p.m. the Wednesday preceding Thanksgiving until the Sunday following Thanksgiving at 6:00 p.m. _____ shall have the children in odd-numbered years and _____ shall have the children in even-numbered years.

4. **CHRISTMAS/WINTER VACATION:** In even-numbered years, _____ shall have the children from the time the children are released from school for their Christmas/Winter vacation until December 26th at 6:00 p.m., with _____ having the children from 6:00 p.m. on December 26th until 6:00 p.m. the day prior to school resuming. In odd-numbered years, _____ shall have the children from 6:00 p.m. the day the children are released from school for their Christmas/Winter vacation until December 26th at 6:00 p.m., with _____ having the children from 6:00 p.m. on December 26th until the day school resumes.

5. **MOTHER'S DAY:** Regardless of which party is otherwise entitled to have the children on the Sunday designated as "Mother's Day," _____ shall have the children on that day.

6. **FATHER'S DAY:** Regardless of which party is otherwise entitled to have the children on the Sunday designated as "Father's Day," _____ shall have the children on that day.

7. **MOTHER'S BIRTHDAY:** Regardless of which party is otherwise entitled to have the children on _____'s birthday (DATE), _____ shall have the children on that day.

8. **FATHER'S BIRTHDAY:** Regardless of which party is otherwise entitled to have the children on _____'s birthday (DATE), _____ shall have the children on that day.

9. **CHILDREN'S BIRTHDAYS:** _____ shall have the children on their respective birthdays in even-numbered years, and _____ shall have the children on their respective birthdays in odd-numbered years.

10. **MARTIN LUTHER KING DAY, MEMORIAL DAY, LABOR DAY, AND NEVADA ADMISSIONS DAY (HALLOWEEN):** _____ shall have the children in even-numbered years from 8:00 a.m. until 6:00 p.m. and _____ shall have the children in odd-numbered years.

11. **PRESIDENT'S DAY, 4TH OF JULY, AND VETERAN'S DAY:** _____ shall have the children in even-numbered years from 8:00 a.m. until 6:00 p.m. and _____ shall have the children in odd-numbered years.

12. **ADDITIONAL TIME:** Any additional time with the children shall be by mutual agreement of both parties.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parent receiving the children shall provide the transportation for the exchanges, using the “honk and seatbelt” rule, i.e. the receiving parent does not leave his or her vehicle, but stops the car, taps the horn once, and the children will go from house to car, or car to house.

NOTICE IS HEREBY GIVEN that the parties are subject to the provisions of NRS 125A.350 and NRS 200.359, which provide: “If custody has been established and the custodial parent or a parent having joint custody intends to move his residence to a place outside of this state and to take the child with him, he must, as soon as possible and **before** the planned move, attempt to obtain the written consent of the other parent to move the child from the state. If the noncustodial parent or other parent having joint custody refuses to give that consent, the parent planning the move shall, before he leaves the state with the child, petition the court for permission to move the child. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent or other parent having joint custody”; as well as NRS 125.510(6) which provides:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN, that pursuant to NRS 125.510 (7) the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties.

For all intents and purposes the habitual residence of the minor children is Las Vegas, Nevada, United States of America.

NOTICE IS HEREBY GIVEN that under the terms of the Parental Kidnaping Prevention Act, 28 U.S.C. Sec. 1738A, and the Uniform Child Custody Jurisdiction Act, NRS 125A.010 *et seq.*, the courts of Nevada have exclusive modification jurisdiction of the custody, visitation and child support terms relating to the children at issue in this case so long as either of the parties, or the children, continue to reside in this jurisdiction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that beginning _____, 19____, _____ shall pay _____ \$_____ per month, per child, for a total of \$_____ per month, payable by the 5th of each month, as and for the support and maintenance of the minor children, until the children reach the age of eighteen (18) years or nineteen (19) if still in high school, marry or become otherwise emancipated.

_____ has certified that the \$_____ per month child support figure is in accordance with the appropriate formula set forth in NRS 125B.070.

[USE THIS IF CHILD SUPPORT NOT SET IN ACCORDANCE WITH NRS 125B.070]

In accordance with NRS 125B.080(2), the parties have acknowledged that the sums specified herein deviate downward from the formula set forth in NRS 125B.070, and have verified that in accordance with that formula, _____'s child support obligation would be set at \$_____ per month, per child, but have agreed that due to, **[GIVE CIRCUMSTANCE FOR DEVIATION]** and the other financial circumstances involved in the case, as well as the distribution of community assets and obligations, they believe the deviation is justified.

[USE THIS IF JOINT PHYSICAL CUSTODY AND NO CHILD SUPPORT]

Due to the parties having joint physical custody of the minor children on an equal amount of time equal custody of the child sharing joint physical custody of the children, neither shall pay the the other child support

Because the parties agree to an equal time-share of the minor child, neither Husband nor Wife shall be responsible for payment of child support to the other.

NOTICE IS HEREBY GIVEN that the following information is provided pursuant to NRS 125B.055(1):

[FATHER FULL NAME] 's date of birth is _____, his social security number is _____, and his driver's licence number is _____.

[MOTHER FULL NAME] 's date of birth is _____, her social security number is _____, and her driver's licence number is _____.

[CHILD FULL NAME] 's date of birth is _____, and [HIS/HER] social security number is _____.

[CHILD FULL NAME] 's date of birth is _____, and [HIS/HER] social security number is _____.

NOTICE IS HEREBY GIVEN that _____ is subject to NRS 125.450 and NRS 31A, inclusive, regarding the withholding of income for delinquent payments of support.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145, either party may request that the Court review the child support obligation at least every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.140, if an installment of an obligation to pay support for a child becomes delinquent, the Court shall determine interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each amount became due. Interest shall continue to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.095, if an installment of an obligation to pay support for a child becomes delinquent in the amount owed for 1 month's support, a 10% per annum penalty must be added to the delinquent amount.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ shall maintain medical insurance for the minor children, with any unreimbursed medical, dental (including orthodontic), optical, and psychological expenses, divided equally pursuant to the attached "*Medical and Health Expense Sharing Policy*."

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ shall maintain an insurance policy on [his/her] life, naming the minor children as beneficiaries thereunder in an amount of not less than one hundred thousand dollars (\$100,000.00).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ shall be entitled to the dependency exemptions for the minor children for income tax reporting purposes each year.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ is awarded the following as [his/her] sole and separate property:

- 1.
- 2.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ is awarded the following as [his/her] sole and separate property:

- 1.
- 2.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that both parties shall execute any and all escrow, document transfers of title, and other instruments that may be required in order to effectuate transfer of any and all interests which either may have in and to the property of the other as specified herein, and to do any other act or sign any other documents reasonably necessary and proper for the consummation, effectuation, or implementation of this decree and its intent and purposes. Should either party fail to execute

any documents to transfer interest to the other, either party may request that this Court have the Clerk of the Court sign in place of the other.

THE PARTIES CERTIFY that they have made a full disclosure of all property, or interest in property, owed by them. The parties further certify that the assets listed in this decree are all of the assets acquired during the marriage, and they have not secreted or hidden any assets; in the event that any property has been omitted from this decree that would have been community property or otherwise jointly-held property under the law applicable as of the date of this decree, the concealing or possessory party will transfer or convey to the other party, at the other party's election:

(a) The full market value of the other party's interest on the date of this agreement, plus statutory interest through and including the date of transfer or conveyance; or

(b) The full market value of the other party's interest at the time that party discovers that he or she has an interest in such property, plus statutory interest through and including the date of transfer or conveyance; or

(c) An amount of the omitted property equal to the other party's interest therein, if it is reasonably susceptible to division.

Nothing contained herein shall alter the sole and absolute ownership of pre-marital property to which there has been no community contribution.

[ALT 1] IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all community property which is not listed herein shall be owned by the parties as equal co-tenants, subject to future partition upon discovery.

[ALT 2] IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that except as may be otherwise expressly provided herein, each of the parties is and shall continue to be the sole and absolute owner of: (a) all real and personal property, whether tangible or intangible, and all interests in such property whether legal, beneficial, or equitable, titled separately in his or her name; (b) all rights and privileges in any such property, including, without limitation, those in any individual retirement account, trust, pension or

profit-sharing plan or other employee benefit plan; and (c) all tangible or intangible personal property which he or she now or in the immediate past has in fact, used, controlled, or enjoyed as an owner would.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ will assume the following community obligations and hold _____ harmless therefrom:

- 1.
- 2.
3. Any and all debts and liabilities incurred by _____ since **[DATE]**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ will assume the following community obligations and hold _____ harmless therefrom:

- 1.
- 2.
3. Any and all debts and liabilities incurred by _____ since **[DATE]**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each party agrees that if any claim, action or proceeding is brought seeking to hold the other party liable on account of any debt, obligation, liability, act or omission assumed by the other party, such party will, at his or her sole expense, defend the other against any such claim or demand and that he or she will indemnify, defend and hold harmless the other party.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if any joint debt, obligation, liability, act or omission creating such liability has been omitted from this Decree and is subsequently discovered, either party may petition the Court for an allocation of that debt, obligation, liability, or liability arising from such act or omission.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties each have verified to the other that they have made a full disclosure of all debts known to them.

[ALT 1] IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that neither party shall pay to the other any sums whatsoever for Alimony or Spousal Support, however titled.

[ALT2] **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that _____ shall pay _____, as and for periodic alimony, the sum of \$_____ per month, payable by the fifth day of each month, for [LENGTH], beginning [DATE].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that _____ is restored to her former name of _____.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each party shall bear his or her own attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all papers, records, pleadings, and evidence, including exhibits and transcripts of testimony in the above-entitled matter are sealed.

DATED _____.

DISTRICT COURT JUDGE

Submitted by:

Approved as to Form and Content:

By: _____
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3551 E. Bonanza Road, Suite 101
Las Vegas, Nevada 89110
(702) 438-4100
Attorney for _____

By: _____

MONTHLY AMOUNT OF MILITARY NON-DISABILITY RETIREMENT PAY

(For individuals retiring after January 1, 2004 who have a DIEMS prior to September 8, 1980)

Retirement amounts are rounded down to nearest whole dollar. Years of service are assumed to be equal to active service.

PAY GRADE	YEARS OF SERVICE										
	Over 20	Over 21	Over 22	Over 23	Over 24	Over 25	Over 26	Over 27	Over 28	Over 29	Over 30
COMMISSIONED OFFICERS											
O-10	6,068	6,363	6,673	6,978	7,279	7,583	7,888	8,189	8,493	8,796	9,099
O-9	5,477	5,751	6,031	6,309	6,584	6,867	7,148	7,423	7,701	7,978	8,253
O-8	5,139	5,440	5,740	6,039	6,337	6,634	6,929	7,223	7,515	7,806	8,096
O-7	4,803	5,097	5,390	5,682	5,973	6,263	6,551	6,838	7,123	7,407	7,690
O-6	3,750	3,937	4,124	4,310	4,496	4,681	4,865	5,048	5,230	5,411	5,592
O-5	3,281	3,445	3,608	3,770	3,931	4,091	4,250	4,408	4,565	4,721	4,877
O-4	2,800	2,949	3,097	3,244	3,390	3,535	3,679	3,822	3,964	4,105	4,246
O-3	2,455	2,578	2,701	2,823	2,944	3,064	3,183	3,301	3,418	3,534	3,650
O-2	1,804	1,885	1,965	2,045	2,124	2,202	2,280	2,357	2,434	2,510	2,586
O-1	1,424	1,495	1,566	1,637	1,707	1,777	1,846	1,915	1,983	2,051	2,119
COMMISSIONED OFFICERS WITH: 1,460 POINTS TOWARDS A RESERVE RETIREMENT; OR 4 YEARS OF ACTIVE SERVICE, AS AN ENLISTED MEMBER AND/OR WARRANT OFFICER											
O-3F	2,820	2,751	2,682	2,613	2,544	2,475	2,406	2,337	2,268	2,199	2,130
O-2F	2,690	2,194	2,293	2,403	2,508	2,612	2,717	2,821	2,926	3,030	3,135
O-1E	1,768	1,850	1,946	2,033	2,122	2,210	2,299	2,387	2,475	2,564	2,652
WARRANT OFFICERS											
W-5	2,363	2,614	2,865	3,117	3,370	3,623	3,876	4,129	4,382	4,635	4,888
W-4	2,472	2,505	2,538	2,571	2,604	2,637	2,670	2,703	2,736	2,769	2,802
W-3	2,178	2,287	2,393	2,499	2,604	2,709	2,814	2,919	3,024	3,129	3,234
W-2	1,921	2,017	2,114	2,211	2,307	2,404	2,501	2,598	2,694	2,791	2,888
W-1	1,767	1,856	1,944	2,033	2,121	2,209	2,296	2,384	2,471	2,558	2,645
ENLISTED MEMBERS											
E-9	2,210	2,321	2,432	2,543	2,654	2,765	2,876	2,987	3,098	3,209	3,320
E-8	1,907	2,008	2,109	2,210	2,311	2,412	2,513	2,614	2,715	2,816	2,917
E-7	1,670	1,754	1,838	1,922	2,006	2,090	2,174	2,258	2,342	2,426	2,510
E-6	1,404	1,470	1,536	1,602	1,668	1,734	1,800	1,866	1,932	1,998	2,064
E-5	1,183	1,243	1,302	1,361	1,420	1,479	1,538	1,597	1,656	1,715	1,774
E-4	945	990	1,035	1,080	1,125	1,170	1,215	1,260	1,305	1,350	1,395
E-3	702	737	772	807	842	877	912	947	982	1,017	1,052
E-2	668	702	735	769	802	836	869	902	935	968	1,001
E-1	595	626	656	686	716	745	775	805	835	865	895

NOTE: As a result of certain provisions for advancement on the retired list or under the "Lower Amendment", some individuals would receive amounts differing from those shown above. Figures shown assume that active service and service for pay are equal. Active duty basic pay cap of \$12,133.20 per month is applied to O-10 over 20 through over 30. Figures are for those with a DIEMS before September 8, 1980. For those entering on or after September 8, 1980, retired pay is computed using high 3.

UNITED STATES CODE SERVICE

*** CURRENT THROUGH P.L. 108-68, APPROVED 8/01/03 ***

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 71. COMPUTATION OF RETIRED PAY

Review Court Orders which may amend this Rule.

10 USCS § 1408 (2003)

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) Definitions. In this section:

(1) The term "court" means--

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act [42

USCS § § 651 et seq.]), and, for purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (*42 U.S.C. 653(p)*), which--

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for--

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (*42 U.S.C. 659(i)(2)*));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (*42 U.S.C. 659(i)(3)*)); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which--

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title [*10 USCS § § 1201 et seq.*], are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title [*10 USCS § § 1431 et seq.*] to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

(5) The term "member" includes a former member entitled to retired pay under section 12731 of this title.

(6) The term "spouse or former spouse" means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term "retired pay" includes retainer pay.

(b) Effective service of process. For the purposes of this section--

(1) service of a court order is effective if--

(A) an appropriate agent of the Secretary concerned designated for receipt of service court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (*50 U.S.C. App. 501 et seq.*) were observed; and

(2) a court order is regular on its face if the order--

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) Authority for court to treat retired pay as property of the member and spouse.

(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A)

was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) Payments by Secretary concerned to (or for benefit of) spouse or former spouse.

(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act [42 USCS § 654b] or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act [42 USCS §§ 651 et seq.], as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(3)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired

pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)

(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order--

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) Limitations.

(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3) (A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall--

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such courts orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of--

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus--

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be

valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4) (A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (*42 U.S.C. 659*), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (*42 U.S.C. 659*) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (*42 U.S.C. 662*) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (*42 U.S.C. 659*), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (*42 U.S.C. 659*) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) Immunity of officers and employees of United States.

(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) Notice to member of service of court order on Secretary concerned. A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) Benefits for dependents who are victims of abuse by members losing right to retired pay.

(1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if--

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security); and

(B) the spouse or former spouse--

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification--

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse of the member or former member.

(7) (A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

(9)

(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10) (A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term "dependent child", with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who--

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) Certification date. It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) Regulations. The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(k) Relationship to other laws. In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act [42 USCS § 659(i)(2)]) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act [42 USCS § 659].

HISTORY: (Added Sept. 8, 1982, P.L. 97-252, Title X, § 1002(a), 96 Stat. 730; Oct. 19, 1984, P.L. 98-525, Title VI, Part E, § 643(a)-(d), 98 Stat. 2547; Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part D, § 644(a), 100 Stat. 3887; April 21, 1987, P.L. 100-26, § 3(3) in part, 7(h)(1) in part, 101 Stat. 273, 282; Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part F, § 653(a)(5), Title XVI, Part C, § 1622(e)(6), 103 Stat. 1462, 1605; Nov. 5, 1990, P.L. 101-510, Div A, Title V, Part E, § 555(a)-(d), (f), (g), 104 Stat. 1569, 1570; Dec. 5, 1991, P.L. 102-190, Div A, Title X, Part E, § 1061(a)(7), 105 Stat. 1472; Oct. 23, 1992, P.L. 102-484, Div A, Title VI, Subtitle E, § 653(a), 106 Stat. 2426; Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle E, § 555(a), (b), Title XI, Subtitle H, § 1182(a)(2), 107 Stat. 1666, 1771; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1501(c)(16), 110 Stat. 499; Aug. 22, 1996, P.L. 104-193, Title III, Subtitle G, § 362(c), 363(c)(1)-(3), 110 Stat. 2246, 2249; Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle D, § 636, 110 Stat. 2579; Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, § 1073(a)(24), (25), 111 Stat. 1901.)

(As amended Dec. 28, 2001, P.L. 107-107, Div A, Title X, Subtitle E, § 1048(c)(9), 115 Stat. 1226; Nov. 25, 2002, P.L. 107-296, Title XVII, § 1704(b)(1), 116 Stat. 2314.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed paragraph designator "(3)" has been inserted in subsec. (d)(1) in the reference to *42 U.S.C. 608(a)(4)* as the paragraph probably intended by Congress.

Effective date of section:

This section became effective on February 1, 1983, pursuant to § 1006 of Act Sept. 8, 1982, P.L. 97-252, which appears as a note to this section.

Amendments:

1984. Act Oct. 19, 1984, in subsec. (a)(2)(C), inserted "in the case of a division of property,"; in subsec. (b)(1)(C), inserted ", if possible,"; in subsec. (d), in para. (1), substituted "After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order." for "After effective service on the secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order.", in para. (5), substituted "child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part" for "disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part"; and in subsec. (e), in para. (2), substituted ", the disposable retired or retainer pay of the member" for "from the disposable retired or retainer pay of a member, such pay", in para. (3)(A), in the introductory matter, deleted "from the disposable retired or retainer pay" following "former spouse", in cl. (i), substituted "from the

member's disposable retired or retainer pay the least amount" for "the least amount of disposable retired or retainer pay", in cl. (ii)(I), deleted "of retired or retainer pay" following "largest amount", in para. (4)(A), deleted "the retired or retainer pay of" following "month from", and substituted "satisfaction of such court orders and legal process from the retired or retainer pay of the member shall be" for "such court orders and legal process shall be satisfied", and in para. (5), deleted "of disposable retired or retainer pay" in two places following "payment of an amount", and substituted "disposable retired or retainer pay" for "such pay" following "which exceeds the amount of".

1986. Act Nov. 14, 1986, § 644(a) (applicable as provided by § 644(b) of such Act, which appears as a note to this section), as amended by Act April 21, 1987, § 3(3), (applicable as if included in Act Nov. 14, 1986 when enacted on 11/14/86, as provided by § 12(a) of Act April 21, 1987, which appears as *10 USCS § 776* note), in subsec. (a), in para. (4), in the introductory matter, deleted "(other than the retired pay of a member retired for disability under chapter 61 of this title)" following "member is entitled", and substituted subpara. (E) for one which read: "are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or".

1987. Act April 21, 1987, in subsec. (a)(4)(D), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Such Act further made a technical correction to the directory language of § 644(a) of Act Nov. 14, 1986, P.L. 99-661, which did not affect the text of this section.

1989. Act Nov. 29, 1989, in subsec. (a), in para. (4)(D), deleted "(26 U.S.C. 3402(i))" following "1986", and, in para. (5), inserted "entitled to retired pay under section 1331 of this title".

Such Act further, in subsec. (a), in the introductory matter of paras. (1)-(4), and in paras. (5) and (6), inserted "The term" and revised the first word in quotation marks in each para. so that the initial letter of such word is lower case.

1990. Act Nov. 5, 1990 deleted "or retainer" following "retired", wherever appearing, and added the subsection headings in subsecs. (a)-(h).

Such Act further (applicable as provided by § 555(e)(1) of such Act, which appears as a note to this section), in subsec. (c)(1), added the sentence beginning "A court may not treat retired pay as property . . .".

Such Act further (applicable as provided by § 555(e)(2) of such Act, which appears as a note to this section), in subsec. (a)(4), in subpara. (A), substituted "for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;" for the semicolon, substituted subpara. (B) for one which read: "(B) are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;", redesignated former subparas. (E) and (F) as subparas. (C) and (D), and deleted former subparas. (C) and (D), which read:

"(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

"(D) are withheld under section 3402(i) of the Internal Revenue Code of 1954 (*26 U.S.C. 3402(i)*) if such member presents evidence of a tax obligation which supports such withholding;"

and added para. (7); in subsec. (c)(2), added the sentence beginning "Payments by the Secretary concerned under subsection (d) . . ."; and, in subsec. (e), in para. (1), substituted "payable under all court orders pursuant to subsection (c)" for "payable under subsection (d)", and, in para. (4)(B), substituted "the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (*42 U.S.C. 662*) to be remuneration for employment that is payable by the United States" for "the disposable retired or retainer pay payable to such member".

1991. Act Dec. 5, 1991 substituted the section heading for one which read: "§ 1408. Payment of retired pay in compliance with court orders".

1992. Act Oct. 23, 1992 (applicable as provided by § 653(c) of such Act, which appears as a note to this section) redesignated subsec. (h) as subsec. (i); and added new subsec. (h).

1993. Act Nov. 30, 1993 (applicable as provided by § 1182(h) of such Act, which appears as *10 USCS § 101* note), in subsecs. (b), in para. (1)(A), and in subsec. (f), in paras. (1) and (2), substituted "subsection (i)" for "subsection (h)"; and, in subsec. (h)(4)(B), inserted "of" after "of that termination".

Such Act further (effective as of 10/23/92 and applicable as if the provisions of subsec. (h)(10) added by such Act were included in the amendment made by § 653(a)(2) of Act Oct. 23, 1992, P.L. 102-484, as provided by § 555(c) of the 1993 Act, which appears as a note to this section), in subsec. (h), in para. (2)(A), inserted "or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation", in para. (8), inserted "or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard", redesignated para. (10) as para. (11), and added a new para. (10).

1996. Act Feb. 10, 1996 (effective 12/1/94 and as if included as amendments made by Title XVI of Act Oct. 5, 1994 as originally enacted, as provided by § 1501(c) of such Act), in subsec. (a)(5), substituted "section 12731" for "section 1331".

Act Aug. 22, 1996 (effective 6 months after enactment, as provided by § 362(d) of such Act, which appears as *42 USCS § 659* note, but subject to § 395(b) and (c) of such Act, which appears as *42 USCS § 654* note), in subsec. (a), in para. (1), in subpara. (B), deleted "and" after the concluding semicolon, in subpara. (C), substituted "; and" for the concluding period, and added subpara. (D), in para. (2), in the introductory matter, inserted "or a support order, as defined in section

453(p) of the Social Security Act (*42 U.S.C. 653(p)*)," in subpara. (B), in cl. (i), substituted "(as defined in section 459(i)(2) of the Social Security Act (*42 U.S.C. 659(i)(2)*))" for "(as defined in section 462(b) of the Social Security Act (*42 U.S.C. 662(b)*))" and, in cl. (ii), substituted "(as defined in section 459(i)(3) of the Social Security Act (*42 U.S.C. 659(i)(3)*))" for "(as defined in section 462(c) of the Social Security Act (*42 U.S.C. 662(c)*))"; in subsec. (d), in the heading, inserted "(or for benefit of)" and, in para. (1), inserted "(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)"; and added subsec. (j).

Such Act further (effective as provided by § 395(a)-(c) of such Act, which appears as *42 USCS § 654* note), in subsec. (d), in para. (1), inserted the sentence beginning "In the case of a spouse or former spouse . . .", and added para. (6); redesignated subsecs. (i) and (j) as subsecs. (j) and (k), and added subsec. (i).

Act Sept. 23, 1996, in subsec. (b)(1)(A), substituted "facsimile or electronic transmission or by mail" for "certified or registered mail, return receipt requested"; and, in subsec. (d), added para. [(7)] (6).

1997. Act Nov. 18, 1997 (applicable as provided by § 1073(i) of such Act, which appears as *10 USCS § 101* note), in subsec. (d), made technical corrections which required no change in text, redesignated para. [(7)] (6) as para. (7) and, in para. (7) as redesignated, in subpara. (A), substituted "out-of-State" for "out-of State"; and, in subsec. (g), made technical corrections which required no change in text.

2001. Act Dec. 28, 2001, in subsec. (d)(6), substituted "August 22, 1996," for "the date of the enactment of this paragraph,".

2002. Act Nov. 25, 2002 (effective on 3/1/2003 pursuant to § 1704(g) of such Act, which appears as *10 USCS § 101* note), in subsec. (h), in paras. (2) and (8), substituted "of Homeland Security" for "of Transportation".

Other provisions:

Repeal of provision for commissary and exchange privileges. Act Sept. 8, 1982, P.L. 97-252, Title X, § 1005, 96 Stat. 737, which formerly appeared as a note to this section, and which was effective on the first day of the first month which began more than 120 days after enactment on Sept. 8, 1982, as provided by § 1006(a) of such Act, which appears as *10 USCS § 1408* note, was repealed by Act July 19, 1988, P.L. 100-370, § 1(c)(5), 102 Stat. 841. It provided for rules and regulations to be prescribed for commissary and post exchange privileges for surviving spouses of retired uniformed services members. For similar provisions see *10 USCS § 1062*.

Effective dates of Sept. 8, 1982 amendments; transitional provisions; applicability of subsec. (d). Act Sept 8, 1982, P.L. 97-252, Title X, § 1006, 96 Stat. 737; Sept. 24, 1983, P.L. 98-94, Title IX, Part D, § 941(c)(4), 97 Stat. 654; Oct. 19, 1984, P.L. 98-525, Title VI, Part E, § 645(b), 98 Stat. 2549, effective Jan. 1, 1985, as provided by § 645(d) in part of such Act, which appears as *10 USCS § 1072* note, provided:

"(a) The amendments made by this title [enacting this section, among other things; for full classification, consult USCS Tables volumes] shall take effect on the first day of the first month which begins more than one hundred and twenty days after the date of the enactment of this title.

"(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title, but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

"(c) The amendments made by section 1003 of this title [amending *10 USCS § § 1447, 1448 and 1450*] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [*10 USCS § § 1447 et seq.*], before, on, or after the effective date of such amendments [subsec. (a) of this note].

"(d) The amendments made by section 1004 of this title [amending *10 USCS § § 1072, 1076 and 1086*] and the provisions of section 1005 of this title [note to this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

"(e) For the purposes of this section--

"(1) the term 'court order' has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

"(2) the term 'former spouse' has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

"(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code."

Applicability of Oct. 19, 1984 amendments. Act Oct. 19, 1984, P.L. 98-525, Title VI, Part E, § 643(e), 98 Stat. 2548, provides: "The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code [subsec. (b)(1) of this section], as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act."

Applicability of 1986 amendments. Act Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part D, § 644(b), 100 Stat. 3887, provides: "The amendments made by subsection (a) shall apply with respect to court orders issued after the date of the enactment of this Act."

Applicability of 1990 amendments. Act Nov. 5, 1990, P.L. 101-510, Div A, Title V, Part E, § 555(e), 104 Stat. 1570; Dec. 5, 1991, P.L. 102-190, Div A, Title X, Part E, § 1062(a)(1), 105 Stat. 1475, provides:

"(1) The amendment made by subsection (a) [amending subsec. (c)(1) of this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

"(2) The amendments made by subsections (b), (c), and (d) [amending subsecs. (a), (c)(2) and (e) of this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act."

Applicability of subsec. (h). Act Oct. 23, 1992, P.L. 102-484, Div A, Title VI, Subtitle E, § 653(c), 106 Stat. 2429, provides: "No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act."

Study required. Act Oct. 23, 1992, P.L. 102-484, Div A, Title VI, Subtitle E, § 653(e), 106 Stat. 2429, provides:

"(1) The Secretary of Defense shall conduct a study in order to estimate--

"(A) the number of persons who will become eligible to receive payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), during each of fiscal years 1993 through 2000; and

"(B) for each of fiscal years 1993 through 2000, the number of members of the Armed Forces who, after having completed at least one, and less than 20, years of service in that fiscal year, will be approved in that fiscal year for separation from the Armed Forces as a result of having abused a spouse or dependent child.

"(2) The study shall include a thorough analysis of--

"(A) the effects, if any, of appeals and requests for clemency in the case of court-martial convictions on the entitlement to payments in accordance with subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a));

"(B) the socio-economic effects on the dependents of members of the Armed Forces described in subsection (h)(2) of such section that result from terminations of the eligibility of such members to receive retired or retainer pay; and

"(C) the effects of separations of such members from the Armed Forces on the mission readiness of the units of assignment of such members when separated and on the Armed Forces in general.

"(3) Not later than one year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study."

Effective date of 1993 amendment. Act Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle E, § 555(c), 107 Stat. 1666, provides: "The amendments made by this section shall take effect as of October 23, 1992, and shall apply as the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102-484 (106 Stat. 2426)."

Termination of Trust Territory of the Pacific Islands. For termination of Trust Territory of the Pacific Islands, see note preceding *48 USCS § 1681*.

Payroll deductions. Act Aug. 22, 1996, P.L. 104-193, Title III, Subtitle G, § 363(c)(4), 110 Stat. 2249, provides: "The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period."

Review of Federal former spouse protection laws. Act Nov. 18, 1997, P.L. 105-85, Div A, Title VI, Subtitle D, § 643, 111 Stat. 1799, provides:

"(a) Review required. The Secretary of Defense shall carry out a comprehensive review (including a comparison) of--

"(1) the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons; and

"(2) the protections, benefits, and treatment afforded under Federal law to employees and former employees of the Government and former spouses of such persons.

"(b) Military personnel matters to be reviewed. In the case of members and former members of the uniformed services and former spouses of such persons, the review under subsection (a) shall include the following:

"(1) All provisions of law (principally those originally enacted in the Uniformed Services Former Spouses' Protection Act (title X of Public Law 97-252 [for full classification, consult USCS Tables volumes])) that--

"(A) establish, provide for the enforcement of, or otherwise protect interests of members and former members of the uniformed services and former spouses of such persons in retired or retainer pay of members and former members; or

"(B) provide other benefits for members and former members of the uniformed services and former spouses of such persons.

"(2) The experience of the uniformed services in administering those provisions of law, including the adequacy and effectiveness of the legal assistance provided by the Department of Defense in matters related to the Uniformed Services Former Spouses' Protection Act [for full classification, consult USCS Tables volumes].

"(3) The experience of members and former members of the uniformed services and former spouses of such persons in the administration of those provisions of law.

"(4) The experience of members and former members of the uniformed services and former spouses of such persons in the application of those provisions of law by State courts.

"(5) The history of State statutes and State court interpretations of the Uniformed Services Former Spouses' Protection Act [for full classification, consult USCS Tables volumes] and other provisions of Federal law described in paragraph (1)(A) and the extent to which those interpretations follow those laws.

"(c) Civilian personnel matters to be reviewed. In the case of former spouses of employees and former employees of the Government, the review under subsection (a) shall include the following:

"(1) All provisions of law that--

"(A) establish, provide for the enforcement of, or otherwise protect interests of employees and former employees of the Government and former spouses of such persons in annuities of employees and former employees under Federal employees' retirement systems; or

"(B) provide other benefits for employees and former employees of the Government and former spouses of such persons.

"(2) The experience of the Office of Personnel Management and other agencies of the Government in administering those provisions of law.

"(3) The experience of employees and former employees of the Government and former spouses of such persons in the administration of those provisions of law.

"(4) The experience of employees and former employees of the Government and former spouses of such persons in the application of those provisions of law by State courts.

"(d) Sampling authorized. The Secretary may use sampling in carrying out the review under this section.

"(e) Report. Not later than September 30, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the results of the review under subsection (a). The report shall include any recommendations for legislation that the Secretary considers appropriate."

NOTES:

CODE OF FEDERAL REGULATIONS

Office of the Secretary of Defense--Reserve Components Common Personnel Data System (RCCPDS), 32 CFR Part 63.

CROSS REFERENCES

This section is referred to in *10 USCS* § § 1059, 1078a, 1447, 1461, 1463; *5 USCS* § § 8332, 8411.

RESEARCH GUIDE

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:58.

Am Jur:

9E Am Jur 2d, Bankruptcy § 3370.

15A Am Jur 2d, Community Property § 52.

24 Am Jur 2d, Divorce and Separation § § 217, 539, 540, 543, 597, 599.

24A Am Jur 2d, Divorce and Separation § 782.

31 Am Jur 2d, Exemptions § 46.

Annotations:

Divorce: excessiveness or adequacy of combined property division and spousal support awards. *55 ALR4th 14*.

Divorce: excessiveness or adequacy of trial court's property award. *56 ALR4th 12*.

Law Review Articles:

Bond; Landever. The Uniformed Services Former Spouses' Protection Act: a practitioner's guide, 10 Am J Fam L 145, Fall 1996.

Polchek. Recent property settlement issues for legal assistance attorneys. *1992 Army Law 4*, December 1992.

Cardos; Perry; Sinnott. The Uniformed Services Former Spouses Protection Act. 33 Federal Bar News and Journal 33, January 1986.

Reppy. The 1990 U.S.F.S.P.A. amendment: no bar to recognition of tenancy in common interests created by pre-McCarty [*McCarty v. McCarty*, 101 S. Ct. 2728 (1981)] divorces that fail to divide military retirement benefits. *29 Idaho L Rev 941*, 1992/1993.

Guilford. Exploring the labyrinth: current issues under the Uniformed Services Former Spouses' Protection Act. *132 Mil L Rev 43*, Spring 1991.

Gilbert. A family law practitioner's road map to the Uniformed Services Former Spouses Protection Act. 32 *Santa Clara L Rev* 61, 1992.

Manashil. The Uniformed Services Former Spouses' Protection Act of 1982: Problems Resulting From its Application. 20 *USFL Rev* 83, Fall 1985.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

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I. IN GENERAL

1. Generally

District court lacked jurisdiction, under Rooker-Feldman doctrine, over naval retiree's claim that Uniformed Services Former Spouses' Protection Act (*10 USCS § 1408*) amounted to unconstitutional taking of his property by state court's award of plaintiff's retirement pay to his ex-spouse as alimony pursuant to Act; plaintiff's constitutional claim was inextricably intertwined with whether state court could award plaintiff's naval retirement pay to his ex-wife and federal district court holding in plaintiff's favor would effectively nullify state court's judgment. *Powell v Powell* (1996, CA11 Ga) 80 F3d 464, 9 FLW Fed C 1015.

10 USCS § 1408 does not require division of military retired pay; it merely provides mechanism to enforce valid state court order directing such division for retired pay received after 6/25/81. DOHA Case No. 99122104 (3/16/00).

2. Purpose

Federal Uniform Services Former Spouses' Protection Act (*10 USCS § 1408*) was not intended to expand subject-matter jurisdiction of federal courts, but rather merely empowered court that otherwise had jurisdiction to divide marital property. *Steel v United States* (1987, CA9 Cal) 813 F2d 1545.

Uniformed Services Former Spouses' Protection Act was intended to obliterate adverse effect of U. S. Supreme Court decision which held that federal law precludes state court from dividing military non-disability retirement pay pursuant to state law. *Allen v Allen* (1986, La App 3d Cir) 484 So 2d 269, cert den (1986, La) 488 So 2d 199 and cert den (1986) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.

Effect of *10 USCS § 1408* is to allow state court to apply state community property law regarding divisibility of multipensions as it existed on June 26, 1981 to all cases pending in trial court and on appeal. *Steczo v Steczo* (1983, App) 135 Ariz 199, 659 P2d 1344.

Purpose of *10 USCS § 1408(c)(1)* was to overrule in its entirety United States Supreme Court decision in *McCarty v McCarty*, which held that under community property law military retirement pensions could not be divided between divorcing spouses. *In re Marriage of Buikema* (1983, 4th Dist) 139 Cal App 3d 689, 188 Cal Rptr 856.

Purpose of *10 USCS § 1408(c)(1)* is to reverse effect of *McCarty v McCarty* (1981) 453 US 210, 69 L Ed 2d 589, 101 S Ct 2728, 2 EBC 1502, which holds that nondisability military retirement benefits are not divisible as community property by state courts; apparent purpose of *§ 1408(c)(1)* reference to June 25, 1981, is to place courts in same position they were in on June 26, 1981, date of *McCarty* decision. *Neese v Neese* (1984, Tex App Eastland) 669 SW2d 388.

10 USCS § 1408 effectively nullified Supreme Court's holding in *McCarty Decision*. *In re Marriage of Smith* (1983) 100 Wash 2d 319, 669 P2d 448.

3. Constitutional issues

Passage of Uniform Services Former Spouse's Protection Act (*10 USCS § 1408(c)(1)*) (USFSPA) did not result in taking of former military personnel's property (portion of their military retired pay) in violation of Fifth Amendment to Constitution as Act merely removed federal pre-emption which precluded state courts from considering military retirement pay as marital property subject to division as part of divorce decree and there was no intent on government's part to take claimants' property; even assuming *arguendo* that property was taken from claimants, it was taken not for public use but for private use of claimants' ex-spouses. *Fern v United States* (1988) 15 Cl Ct 580, *affd* (1990, CA) 908 F2d 955, 12 EBC 1936.

Uniform Services Former Spouses Protection Act, which authorizes state courts to treat disposable retire pay as property solely of retiree or as property of retiree and spouse, does not effect taking of property requiring service member whose pay has been apportioned in community property states pursuant to divorce decree to be reimbursed by U.S. Government. *Fern v United States* (1990, CA) 908 F2d 955, 12 EBC 1936.

4. Construction

Statute does not grant state courts power to treat as property divisible upon divorce military retirement pay that retiree had waived pursuant to *38 USCS § 3105* in order to receive veterans' disability benefits; it cannot be read merely as garnishment statute designed not to pre-empt authority of state courts but solely to set out circumstances under which federal government will make direct payments of retirement pay to retiree's former spouse pursuant to court order because statute provides that court may treat disposable retired or retainer pay but not total retired pay as property of retiree and spouse, and term "disposable retired or retainer pay" is defined to exclude military retirement pay waived in order to receive veterans' disability benefits, and other subsections of statute impose substantive limits on state courts' power to divide military retirement pay. *Mansell v Mansell* (1989) 490 US 581, 104 L Ed 2d 675, 109 S Ct 2023, 10 EBC 2521.

Direct payment provision does not apply to amendment or modification of divorce decree that does not divide or address military retired pay and that became final before June 26, 1981. *Carmody v Secretary of Navy* (1989, CA4 Va) 886 F2d 678.

Action by former spouse of retired military officer for partition of officer's retirement pay is dismissed, where parties' marriage was dissolved by German court, because Uniformed Services Former Spouses Protection Act only allows courts to apply state divorce laws to military pensions, but does not expressly or impliedly grant court power to adjudicate any cause nor does it provide substantive rules for treatment of military pensions in divorce or domestic relations contexts, so

court lacks jurisdiction to adjudicate plaintiff's request to partition military retirement pay. *Brown v Harms* (1994, ED Va) 863 F Supp 278.

Under California law, Uniform Services Former Spouse's Protection Act grants authority for state court to determine wife's community property interest in former husband's military retirement pension in action subsequent to divorce decree, since there was no final adjudication of that interest at time divorce decree became final in 1970. *Bryant v Sullivan* (1985, App) 148 Ariz 426, 715 P2d 282.

Former serviceman's wife seeking division of military retirement pay of husband in accord with § 1408 has community interest in such pay where military retirement pay was classified as community property under state law at time of divorce and after effective date of § 1408 which permits but does not require states to classify military retirement pay as marital property. *Savoie v Savoie* (1986, La App 5th Cir) 482 So 2d 23.

Rights to military retirement benefits accrue continuously throughout husband's period of service, and wife's entitlement to those benefits should be determined under law of state in which parties were domiciled for respective periods during which military retirement benefits accrued. *Allen v Allen* (1986, La App 3d Cir) 484 So 2d 269, cert den (1986, La) 488 So 2d 199 and cert den (1986) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.

Modification of decree of dissolution ordering Secretary of Air Force to directly pay retired serviceman's former wife 50 percent of military retirement pay is appropriate equitable response to circumstances and is permitted under § 1408 where serviceman failed to pay wife any support after dissolution. *In re Marriage of Hadley* (1986) 77 Or App 295, 713 P2d 39.

Order modifying decree of dissolution which required retired serviceman and former wife to certify to Secretary of Air Force as to validity of modification decree of dissolution should be eliminated since there are no conflicting court orders in case and § 1408 requiring certification is applicable only when Secretary of Air Force is served with conflicting court orders. *In re Marriage of Hadley* (1986) 77 Or App 295, 713 P2d 39.

Section 1048(c)(1) does not mandate that military retirement pension be shared by recipient and recipient's former spouse; it only authorizes division, and leaves to state courts decision regarding whether any allocation is to be made. *In re Marriage of Habermehl* (1985, 5th Dist) 135 Ill App 3d 105, 89 Ill Dec 939, 481 NE2d 782.

Section 1408 does not require reinstatement of earlier judgments or division of military pay but only permits reopening of final judgments for reconsideration in light of its provisions. *In re Marriage of Giroux* (1985) 41 Wash App 315, 704 P2d 160.

10 USCS § 1408 does not signify congressional intent to pre-empt state law and disallow disposition of military disability retirement paid by state courts in accordance with state law, in situation where (1) retirement occurred before dissolution of marriage and at time when military spouse was eligible for both longevity and disability retirement and could

have elected to receive longevity retirement benefits under both federal and state law, and (2) nonmilitary spouse would have been entitled to a community property share of longevity retirement pension for which husband was eligible had he elected to receive longevity retirement benefits; in such situation, military spouse cannot destroy other spouse's federal statutory right and concomitant state law right by simply accepting disability retirement and opting not to elect longevity retirement. *In re Marriage of Mastropaolo* (1985, 4th Dist) 166 Cal App 3d 953, 213 Cal Rptr 26, cert den (1986) 475 US 1011, 89 L Ed 2d 301, 106 S Ct 1185.

5. Application

Division of value by state Family Court of right of United States Public Health veterinarian to retire and receive benefits does not violate 10 USCS § 1408. *Wallace v Wallace* (1984, App) 5 Hawaii App 55, 677 P2d 966.

Trial court did not err in awarding portion of husband's military pension to wife in legal separation proceeding in view of enactment of 10 USCS § 1408. *Coates v Coates* (1983, Mo App) 650 SW2d 307.

Husband's military nondisability retirement benefits could be divided in divorce action where trial court still had control over divorce judgment. *Voronin v Voronin* (1983, Tex App Austin) 662 SW2d 102.

Trial court erred in not considering husband's military retirement benefits at time of division of community estate between divorcing husband and wife, notwithstanding at time of divorce decree, Congress had not enacted 10 USCS § 1408. *Gordon v Gordon* (1983, Tex App Corpus Christi) 659 SW2d 475 (superseded by statute on other grounds as stated in *Southern v Glenn* (1984, Tex App San Antonio) 677 SW2d 576).

6. Relationship to state law

Section 1408 does not pre-empt New Mexico community property law which treats military disability retirement benefits as community property. *Austin v Austin* (1985) 103 NM 457, 709 P2d 179.

Trial court erred in declaring military pension to be husband's separate property, notwithstanding that Uniformed Services Former Spouse's Protection Act (10 USCS § 1408) gives each state power to deal with military pensions as it sees fit. *In re Marriage of Sarles* (1983, 4th Dist) 143 Cal App 3d 24, 191 Cal Rptr 514.

Former Spouses' Protection Act (10 USCS § 1408) allowing courts to consider retirement pay in fashioning divorce settlements permits but does not command state courts to consider military retirement benefit as marital property; Act provides power to each state to deal with military pensions in manner in which it had previously treated them or chooses to treat them in future. *Koenes v Koenes* (1985, Ind App) 478 NE2d 1241 (superseded by statute on other grounds as stated in *In re Marriage of Bickel* (1989, Ind App) 533 NE2d 593); *In re Marriage of Battles* (1991, Ind) 564 NE2d 565.

Section 1408, which is permissive, cannot create procedural mechanism to reopen final state court judgments; divorce decree entered prior to enactment of § 1408 awarding all military retirement benefits to husband was final judgment which, not being void, could not be collaterally attacked in partition suit filed subsequent to enactment of § 1408. *Allison v Allison* (1985, Tex App Fort Worth) 690 SW2d 340.

Uniformed Services Former Spouses' Protection Act (10 USCS § 1408) does not preclude state courts from considering former spouse's military disability benefits received in lieu of waived retirement pay when making equitable division of marital assets. *Clauson v Clauson* (1992, Alaska) 831 P2d 1257, 15 EBC 1913.

In light of enactment of § 1408, marital property interest may be recognized in retirement benefits from military pension in accordance with Illinois case law prior to United States Supreme Court's decision in *McCarty v McCarty* (1981) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589. *In re Marriage of Dooley* (1985, 2d Dist) 137 Ill App 3d 401, 92 Ill Dec 163, 484 NE2d 894.

Although failure to include within 10 USCS § 1408(c)(1) disability payments received in accordance with waiver executed pursuant to 28 USCS § 3105 arguably leads to conclusion that Congress' intent was to preclude states from recognizing community interest in such payments, neither 38 USCS § 3101(a) prohibition against assignments of Veterans' benefits nor any other federal law directly or positively precludes application of Louisiana's community property law to disability payments received pursuant to 38 USCS § 3105 election. *Campbell v Campbell* (1985, La App 2d Cir) 474 So 2d 1339, cert den (1985, La) 478 So 2d 148.

7. Jurisdiction

Court otherwise having jurisdiction of parties is not allowed to invoke powers of Federal Uniform Services Former Spouses' Protection Act (10 USCS § 1408) unless personal jurisdiction has been acquired by domicile or consent or residence other than by military assignment; careful reading of 10 USCS § 1408(c)(1) reveals that provision is limitation on subject-matter, rather than personal jurisdiction. *Steel v United States* (1987, CA9 Cal) 813 F2d 1545.

Nevada District Court has jurisdiction over former military wife's suit for partition of ex-husband's military retirement benefits, even though ex-husband, at time of suit, did not reside in, was not domiciled in, and had not consented to jurisdiction in Nevada, because 10 USCS § 1408(c) is limitation on subject matter rather than personal jurisdiction, and court has personal jurisdiction under Nevada law based on ex-husband's consent to jurisdiction for purposes of 1974 divorce decree. *Lewis v Lewis* (1988, DC Nev) 695 F Supp 1089.

Exception to court's subject matter jurisdiction overruled in former wife's post divorce petition to partition husband's military retirement pay, where military spouse gave implied consent to state court's jurisdiction by making general

appearance waiving all jurisdictional objections under state law when spouse answered divorce petition, this waiver gave state jurisdiction over all matters incidental to dissolution of marriage; § 1408 does not require express consent to court's jurisdiction. *Allen v Allen* (1986, La App 3d Cir) 484 So 2d 269, cert den (1986, La) 488 So 2d 199 and cert den (1986) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.

Exception to personal jurisdiction in post-divorce action for partition of community property including former husband's military retirement pay overruled since husband who domiciled in Mississippi and formerly resided in Louisiana with wife submitted to jurisdiction over his person in Louisiana by answering divorce petition filed in Louisiana such that it was within state power to bind him by every subsequent order in the cause. *Allen v Allen* (1986, La App 3d Cir) 484 So 2d 269, cert den (1986, La) 488 So 2d 199 and cert den (1986) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.

Under Uniform Services Former Spouses' Protection Act, Texas court did not have personal jurisdiction over former husband in action to partition of husband's military retirement pay where husband never resided or was domiciled in Texas, and where husband never consented to personal jurisdiction in Texas for partition of military retirement pay notwithstanding that husband was petitioner in Texas divorce suit. *Kovacich v Kovacich* (1986, Tex App San Antonio) 705 SW2d 281.

Where at time of Texas divorce action husband was serviceman stationed in Germany, and where husband initially filed special appearance contesting jurisdiction but subsequently entered general appearance by allowing case to be tried, husband consented to jurisdiction and satisfied requirements of § 1408(c)(4). *Seeley v Seeley* (1985, Tex App Austin) 690 SW2d 626.

Section 1408(c)(4) setting forth jurisdictional criteria applicable to courts' treatment of disposable retired or retainer pay in manner provided by § 1408(c)(1) is limitation upon court's exercise of jurisdiction to dispose of military retirement pay; Court of Appeals must apply such jurisdictional provisions rather than more expansive state law provisions applied by trial court. *Seeley v Seeley* (1985, Tex App Austin) 690 SW2d 626.

8. Spousal notification requirement

Requirement in predecessor to 10 USCS § 1448(a) that spouse be notified if person eligible to participate in plan elects not to participate applies only to service member who is automatically enrolled in Survivor Benefit Plan because he retires on or after effective date of § 1448; requirement does not apply with respect to service member who was already entitled to retired or retainer pay and who was permitted by Congress but declined to elect to participate in Plan. *Passaro v United States* (1985, CA) 774 F2d 456, cert den (1986) 476 US 1114, 90 L Ed 2d 653, 106 S Ct 1969.

9. Pay subject to apportionment and direct payment

Secretary of Army is directed to distribute portion of exhusband's military retirement pay to divorced wife, where discrepancy over validity of divorce decree granting wife one-third of benefits was resolved when state appellate court denied husband's post-trial motion for relief, because wife has complied with requirements and Secretary has duty to make payments under *10 USCS § 1408(d)(1)*. *Andrean v Secretary of the United States Army* (1993, DC Kan) 840 F Supp 1414.

Former spouse's partition action is forbidden by *10 USCS § 1408(c)(1)*, where pre-1981 final divorce decree neither treated nor reserved jurisdiction to treat any amount of military retired pay as community property, even though decree did not include court-ordered, court-ratified, or court-approved property settlement, because parenthetical clause in § 1408(c)(1) expands or illustrates preceding list to include property settlements incident to such decrees but does not limit preceding words. *Delrie v Harris* (1997, WD La) 962 F Supp 931.

If retired military personnel requests additional income tax withholdings beyond regularly required withholdings in computation of net or "disposable" military retired pay subject to apportionment, applicant is required to present factual evidence demonstrating existence of tax burden justifying additional withholding; no additional tax withholding may be allowed in computation of disposable retired pay in case of retired officer who gives only rough estimate or opinion of projected tax obligations and presents no financial record as evidence in support of estimate; although Comptroller General has jurisdiction to resolve questions relating to computation of net military "disposable retired or retainer pay" under Uniform Services Former Spouses' Protection Act (*10 USCS § 1408*), revenue rulings concerning withholding of federal taxes from income are reserved by statute for determination primarily by the Internal Revenue Service. (1984) 63 Op Comp Gen 323.

No error in award to wife of percentage of former husband's military retirement benefits notwithstanding allegation that said retirement benefits accrued in Maryland which was not then community property state, since husband failed to offer convincing proof of substantive law of Maryland on issue of distribution of military pay and where it was not clear that said benefits accrued in Maryland, such that court presumed Maryland and Louisiana law were similar thus permitting distribution to former spouse of military retirement pay. *Allen v Allen* (1986, La App 3d Cir) 484 So 2d 269, cert den (1986, La) 488 So 2d 199 and cert den (1986) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.

Trial court did not abuse discretion in determining that husband's military retirement pay was available for division in divorce proceeding. *Chase v Chase* (1983, Alaska) 662 P2d 944.

Section 1408(a)(4)(C)(1) does not preclude California court from awarding ex-spouse more than community property interest in retiree's "disposable" retirement pay. *Casas v Thompson* (1986) 42 Cal 3d 131, 228 Cal Rptr 33, 720 P2d 921, cert den (1986) 479 US 1012, 93 L Ed 2d 713, 107 S Ct 659.

Military retirement is classified in accordance with law of jurisdiction for purposes of division following dissolution of marriage; military retirement pay is classified as community or separate property according to whether act of service upon which benefits were based took place prior to marriage or after marriage. *Lang v Lang* (1985, App) 109 Idaho 802, 711 P2d 1322.

Fact that § 1408(c)(1) was made retroactive to June 25, 1981, does not warrant modification of judgment for maintenance and division of marital and nonmarital property rendered in February, 1982, notwithstanding that judgment did not divide husband's retirement pension, where parties and trial court gave full recognition to payments generated by pension in making division of marital property and where parties agreed to non-modification provision pursuant to Illinois law. *In re Marriage of Habermehl* (1985, 5th Dist) 135 Ill App 3d 105, 89 Ill Dec 939, 481 NE2d 782.

Uniformed Services Former Spouses' Protection Act (10 USCS § 1408) grants states authority to treat all disposable retired pay as marital property, but limits direct government payment to former spouses to 50 percent of disposable retired pay; where trial court intends to give half of gross pension to spouse, court must, in addition to ordering direct government payments, order retired servicemen to make monthly supplemental payments. *Deliduka v Deliduka* (1984, Minn App) 347 NW2d 52.

Under 10 USCS § 1408(d)(2), wife is entitled to portion of husband's nondisability military retirement pay from June 25, 1981. *Cameron v Cameron* (1982, Tex) 641 SW2d 210 (superseded by statute on other grounds as stated in *Southern v Glenn* (1984, Tex App San Antonio) 677 SW2d 576) and (superseded by statute on other grounds as stated in *Harrell v Harrell* (1984, Tex App Corpus Christi) 684 SW2d 118).

Decree of dissolution awarding wife less than one-half of husband's military retirement pay is effective for pay periods beginning after effective date of 10 USCS § 1408, regardless of date of previous dissolution order. *In re Marriage of Wood* (1983) 34 Wash App 892, 664 P2d 1297.

10. --Pay excluded

Retirement pay owed to United States is excluded from definition of disposable retired or retainer pay and thus is not subject to state's marital property law so that withheld portion of husband's retirement pay in satisfaction of unpaid tax assessments was not subject to wife's community property interests. *Arford v United States* (1991, CA9 Idaho) 934 F2d 229, 91 CDOS 4026, 91 Daily Journal DAR 6329, 92-1 USTC P 50229, 67 AFTR 2d 91-1135, magistrate's

recommendation (1992, DC Idaho) 71 AFTR 2d 93-718 and (criticized in *Lyle v Commodity Credit Corp.* (1996, CA10 Kan) 97-1 USTC P 50119, 78 AFTR 2d 96-7623).

Military separation pay received under § 1174, a one time payment received upon involuntary discharge from service to financially assist transition to private employment, is not embraced within meaning of disposable retirement or retainer pay under § 1408, which permits states to treat as separate property or property of serviceman and his spouse, where separation pay is a one time payment as opposed to compensation for past services and where § 1408 does not mention separation pay in its definition of retired or retainer pay, accordingly if service member is not married at time of involuntary discharge, separation pay is separate property unless service member re-enlists and becomes eligible for military longevity retirement benefits. *In re Marriage of Kuzmiak* (1986, 2nd Dist) 176 Cal App 3d 1152, 222 Cal Rptr 644, cert den (1986) 479 US 885, 93 L Ed 2d 252, 107 S Ct 276.

11. 10-year marriage requirement

Federal Uniformed Services Former Spouse's Protection Act (10 USCS § 1408) is not limited in its application to spouses married to military retiree for 10 years or more during which time retiree served at least 10 years of service; § 1408(d)(2) bar to payments if spouse or former spouse was not married to member for a period of 10 years or more during which member performed at least 10 years of service applies only where direct payments are made by Secretary to Former Spouse pursuant to § 1408(c)(1) in response to court order. *Le Vine v Spickelmier* (1985) 109 Idaho 341, 707 P2d 452.

10 USCS § 1408 does not require that 10-year threshold be met by consecutive years of marriage, but may be obtained by tacking on credit from 2 marriages to same spouse. *Anderson v Anderson* (1984, Greene Co) 13 Ohio App 3d 194, 13 Ohio BR 242, 468 NE2d 784.

10 USCS § 1408(d) does not impose 10-year marriage requirement as prerequisite to division of military retirement benefits and receipt thereof by former spouse but merely provides such requirement as prerequisite to direct payments to former spouse by Secretary. *Oxelgren v Oxelgren* (1984, Tex App Fort Worth) 670 SW2d 411.

12. Miscellaneous

In view of explicit provision in subsection (f)(1) it is patently clear that U.S. has not waived its immunity to permit claim challenging USFSPA. *Goad v United States* (1991) 24 Cl Ct 777, app dismd without op (1992, CA) 976 F2d 747, cert den (1992) 506 US 1034, 121 L Ed 2d 687, 113 S Ct 814.

Since Uniform Services Former Spouse's Protection Act (10 USCS § 1408) provides that spouses and former spouses have proprietary, inalienable interest in member's military pension benefits, if so awarded by court with subject matter

jurisdiction over parties, when spouse or former spouse files bankruptcy petition, that interest is excluded from bankruptcy estate. *In re Satterwhite* (2002, BC WD MO) 271 BR 378.

Provision prohibiting payments pursuant to court order that became final before June 26, 1981, did not apply to 1985 bankruptcy court order authorizing U.S. Army Finance and Accounting Center to begin making direct payments of portion of plaintiff's retirement pay to plaintiff's ex-wife. *Chandler v United States* (1994) 31 Fed Cl 106, affd without op (1994, CA FC) 39 F3d 1196, reported in full (1994, CA FC) 1994 US App LEXIS 28130 and mand den, motion den sub nom *In re Chandler* (1995, CA FC) 1995 US App LEXIS 11894.

Authority to issue authoritative revenue rulings on federal income tax withholding rests with IRS; however, Comptroller General may render decision regarding individual's tax withholdings to extent that amounts withheld affect calculation of individual's disposable retired pay as that term is defined in 10 USCS § 1408. Colonel Robert M. Krone, USAF (Retired)--Federal Income Tax Withholding from Military Retired Pay for Former Spouse Protection Act Purposes (8/6/96) Comp. Gen. Dec. No. B-271052.

10 USCS § 1408 does not impose duty on federal agencies to continually "police" former spouse's entitlement to service member's retired pay. DOHA Case No. 99122104 (3/16/00).

10 USCS § 1408(f)(1) means that United States has not waived its immunity from suit, and that United States and its officers and employees are not liable when they comply with statute. DOHA Case No. 99122104 (3/16/00).

II. RETROACTIVITY

13. Generally

Because there is no property or contractual interest in any anticipated level of military retired pay, and right to retired pay is within exclusive control of Congress and is always subject to change, retroactive application of Uniform Services Former Spouse's Protection Act (10 USCS § 1408(c)(1)) did not constitute unjustified impairment of implied contractual arrangement between retired members of Armed Forces and government. *Fern v United States* (1988) 15 Cl Ct 580, affd (1990, CA) 908 F2d 955, 12 EBC 1936.

State judgments rendered before McCarty decision are not void ab initio and Texas divorce decree awarding wife percentage of husband's Army pension benefits upon his retirement may not be collaterally attacked; nor is res judicata effect of unappealed divorce decree overcome by retroactive application of McCarty decision. *Brown v Robertson* (1985, WD Tex) 606 F Supp 494.

Decision in *McCarty v McCarty* (1981) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589, that wife has no property interest in her husband's military retirement pay is not to be applied retroactively to any community property settlement agreement, be it incorporated into judgment or not; to apply McCarty retroactively would violate clear intent of Congress, in passing § 1408, to completely obliterate effect of McCarty decision. *Stevens v Stevens* (1985, La App 2d Cir) 476 So 2d 883, cert den (1985, La) 478 So 2d 908.

Former serviceman's wife was entitled to community share of military retirement pay as of retroactive date specified in § 1408, and not retirement date of 8/1/80 since there was no prior adjudication of retirement pay prior to retroactive date. *Savoie v Savoie* (1986, La App 5th Cir) 482 So 2d 23.

Wife not entitled to equitable distribution of former husband's military pension where wife entered into valid separation agreement which contained no reference to pension but contained general release or waiver provision of all rights of claims to property, notwithstanding that at time of agreement state law precluded consideration of military pensions as marital property and that subsequent to date of agreement § 1408 was enacted with limited retroactive application permitting but not requiring state to consider pensions as marital property and that state law was subsequently amended to include military pensions as marital property since state law as amended was effective prospectively. *Morris v Morris* (1986) 79 NC App 386, 339 SE2d 424, review den (1986) 316 NC 733, 345 SE2d 390.

Use of date on which United States Supreme Court decided McCarty Case as reference in 10 USCS § 1408(c)(1) evidences legislative intent that law relative to community property treatment of military retirement pensions be as though McCarty did not exist, rendering moot any argument as to retroactive application of McCarty rule. *In re Marriage of Frederick* (1983, 5th Dist) 141 Cal App 3d 876, 190 Cal Rptr 588.

10 USCS § 1408 is retroactive to date of United States Supreme Court McCarty decision and applicable to all cases not final as of its effective date. *In re Marriage of Hopkins* (1983, 2nd Dist) 142 Cal App 3d 350, 191 Cal Rptr 70.

Decision in *McCarty v McCarty* (1981) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589, that wife has no property interest in her husband's military retirement pay is not to be applied retroactively to any community property settlement agreement, be it incorporated into judgment or not; to apply McCarty retroactively would violate clear intent of Congress, in passing § 1408, to completely obliterate effect of McCarty decision. *Stevens v Stevens* (1985, La App 2d Cir) 476 So 2d 883, cert den (1985, La) 478 So 2d 908.

Uniformed Services Former Spouse Protection Act (10 USCS § 1408) does not compel opening of final decree disposing of marital property. *Bishir v Bishir* (1985, Ky) 698 SW2d 823.

McCarty v McCarty (1981) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589, prohibiting division of military retirement benefits upon divorce, and 10 USCS § 1408, which in effect overruled McCarty but expressly exempted from division

disability retirement benefits under *10 USCS § 1201*, do not apply retroactively to divorce decrees which became final prior to McCarty decision. *Patrick v Patrick* (1985, *Tex App Fort Worth*) 693 SW2d 52.

10 USCS § 1408 may be applied retroactively since it permits state courts to remedy harsh result to former spouses and, as remedial statute, may be retroactively applied since it cures defects or furthers remedy. *Thorpe v Thorpe* (1985, *App*) 123 Wis 2d 424, 367 NW2d 233.

14. Relationship to state law

Whatever limitations § 1408 may have concerning dissolution of military pay, § 1408 has no bearing on determining arrears for community property obligations decreed in judgments long final before effective date of Federal Uniform Services Former Spouses' Protection Act. *In re Marriage of Stier* (1986, 4th Dist) 178 Cal App 3d 42, 223 Cal Rptr 599.

Retroactive provisions of Federal Uniformed Services Former Spouses' Protection Act does not pre-empt act of state legislature which provides procedure for reopening community property settlements, judgments or decrees that become final prior to effective date of FUSFSPA and permit modification of community property division to include division of military retirement benefits where act of state legislature does not attempt to override limited retroactivity of FUSFSPA or to expand upon it; Federal Uniform Services Former Spouse' Protection Act, standing alone, does not have retroactive application sufficient to allow reopening of final divorce judgments which became effective before effective date of FUSFSPA. *In re Marriage of Potter* (1986, 5th Dist) 179 Cal App 3d 73, 224 Cal Rptr 312, cert den and app dismd (1987) 479 US 1072, 94 L Ed 2d 124, 107 S Ct 1262.

15. Validity of prior decisions/decrees

Former wife's action against Defense Finance and Accounting Service, seeking direct payment of her share of her former husband's military retirement pay as provided in state-court judgments, is dismissed, because final decree of divorce was issued prior to June 25, 1981, and because subsequent state-court judgments awarding wife portion of military retirement benefits were not in accord with mandate of *10 USCS § 1408(c)(1)* and of state law. *Kemp v United States Dep't of Defense* (1994, *WD La*) 857 F Supp 32.

Passage of Uniform Services Former Spouses' Protection Act which permits but does not require state to consider retirement benefits as marital property and provides new remedies for collection of support does not constitute sufficient change in circumstances with respect to method and mode of support payment to warrant modification of decree of dissolution where retired serviceman's and former wife had stipulated amount and duration of spousal support before

effective date of § 1408 and where serviceman's ability to pay was unaffected by § 1408 since his pension was considered in computation of support payments. *In re Marriage of Hadley* (1986) 77 Or App 295, 713 P2d 39.

Fact that § 1408 is effective February 1, 1983 does not bar action by former wife, divorced from serviceman in 1966, for community interest in serviceman's military retirement pension, where former wife does not seek to modify or reopen 1966 judgment, and where her action is independent one to divide asset which was not before divorce court in 1966 and was not altered by divorce decree. *Casas v Thompson* (1986) 42 Cal 3d 131, 228 Cal Rptr 33, 720 P2d 921, cert den (1986) 479 US 1012, 93 L Ed 2d 713, 107 S Ct 659.

Family court decision rendered on basis of Supreme Court's *McCarty* decision was properly reopened to apply state laws as they existed prior to *McCarty*. *Smith v Smith* (1983, Del Fam Ct) 458 A2d 711, 1983 Del Fam Ct LEXIS 41.

Congress intended § 1408(c)(1) to be applied retroactively to divorces which occurred between US Supreme Court's decision in *McCarty v McCarty* (1981) 69 L Ed 2d 589, holding that military pension could not be divided between spouses by state court, and effective date of § 1408(c)(1), although Missouri law would not allow final divorce decree to be reopened to address military pension question. *In re Marriage of Quintard* (1985, Mo App) 691 SW2d 950.

Divorced wife of military service member is entitled to benefits of 10 USCS § 1408, notwithstanding it became effective one month after date of final divorce. *Walentowski v Walentowski* (1983) 100 NM 484, 672 P2d 657.

Retroactive application of § 1408 so as to give former spouse relief from amended decree, entered in response to *McCarty v McCarty* (1981) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589, taking from former wife previously-awarded one-half community interest in former husband's military retirement pay does not deprive husband of vested right without due process of law. *In re Marriage of Giroux* (1985) 41 Wash App 315, 704 P2d 160.

16. --Res judicata

Res judicata did not bar wife seeking recovery of percentage of former husband's disposable military retirement pay because of previous action denying entitlement to retirement pay based in part on Supreme Court decision holding military benefits as personal not marital property, since subsequent enactment of § 1408 created new fact, a change in law, and new cause of action. *Powell v Powell* (1985, Tex App Waco) 703 SW2d 434, app dismd (1986) 476 US 1180, 91 L Ed 2d 541, 106 S Ct 2911, reh den (1986) 478 US 1031, 92 L Ed 2d 767, 107 S Ct 11 and (criticized in *Trahan v Trahan* (1995, Tex App Austin) 894 SW2d 113).

17. Estoppel

Although doctrines of res judicata and collateral estoppel do not bar spouse from recovering his or her community interest invested in matured military pension benefits omitted from petition and later judgment of dissolution of marriage, retroactive enforcement of such rights is subject to military retiree's rights to raise defenses of equitable estoppel and laches; in such cases, trial court must apply equitable principles to prevent unfairness to spouse who may have placed substantial reliance on judgment. *In re Marriage of Chambers (1985, 4th Dist) 174 Cal App 3d 1079, 220 Cal Rptr 504.*

PART 63—FORMER SPOUSE PAYMENTS FROM RETIRED PAY

Sec.

63.1 Purpose.

63.2 Applicability and scope.

63.3 Definitions.

63.4 Policy.

63.5 Responsibilities.

63.6 Procedures.

AUTHORITY: 10 U.S.C. 1408.

SOURCE: 50 FR 2667, Jan. 18, 1985, unless otherwise noted.

§ 63.1 Purpose.

Under 10 U.S.C. 1408, this part establishes policy and authorizes direct payments to a former spouse of a member from retired pay in response to court ordered alimony, child support, or division of property.

§ 63.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Coast Guard (under agreement with the Department of Transportation), the Public Health Service (PHS) (under agreement with the Department of Health and Human Services); and the National Oceanic and Atmospheric Administration (NOAA) (under agreement with the Department of Commerce). The term “Uniformed Services,” as used herein, refers to the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the PHS, and the commissioned corps of the NOAA.

(b) This part covers members retired from the active and reserve components of the Uniformed Services who are subject to court orders awarding alimony, child support, or division of property.

§ 63.3 Definitions.

(a) *Alimony*. Periodic payments for the support and maintenance of a spouse or former spouse in accordance with State law under 42 U.S.C. 662(c). It includes, but is not limited to, spousal support, separate maintenance, and maintenance. Alimony does not include any payment for the division of property.

(b) *Annuitant*. A person receiving a monthly payment under a survivor benefit plan related to retired pay.

(c) *Child support*. Periodic payments for the support and maintenance of a child or children, subject to and in accordance with State law under 42 U.S.C. 662(b). It includes, but is not limited to, payments to provide for health care, education, recreation, and clothing or to meet other specific needs of such a child or children.

(d) *Court*. Any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and any court of the United States as defined in 28 U.S.C. 451 having competent jurisdiction; or any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

(e) *Court Order*. As defined under 10 U.S.C. 1408(a)(2), a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree. It includes a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or

approved property settlement incident to such previously issued decree. The court order must provide for the payment to a member's former spouse of alimony, child support, or a division of property. In the case of a division of property, the court order must specify that the payment is to be made from the member's disposable retired pay.

(f) *Creditable service*. Service counted towards the establishment of any entitlement for retired pay. See paragraphs 10102 through 10108 of DoD 1340.12-M, 42 U.S.C. 212 for the PHS, and 33 U.S.C. 864 and 10 U.S.C. 6323 for NOAA.

(g) *Designated agent*. A representative of a Uniformed Service who will receive and process court orders under this part.

(h) *Division of property*. Any transfer of property or its value by an individual to his or her former spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses.

(i) *Entitlement*. The legal right of a member to receive retired pay.

(j) *Final decree*. As defined under 10 U.S.C. 1408(a)(3), a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(k) *Former spouse*. The former husband or former wife, or the husband or wife, of a member.

(l) *Garnishment*. The legal procedure through which payment is made from an individual's pay that is due or payable to another party in order to satisfy a legal obligation to provide child support, to make alimony payments, or both, under 5 CFR part 581 and 42 U.S.C. 659 or to enforce a division of property other than a division of retired pay as property under 10 U.S.C. 1408(d)(5).

(m) *Member*. A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired from the regular or reserve component of the Uniformed Service concerned.

(n) *Renounced pay*. Retired pay to which a member has an entitlement, but for which receipt of payment has been waived by the member.

(o) *Retired pay*. The gross entitlement due a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, if applicable, and date of retirement (transfer to the Fleet Reserve or Fleet Marine Corps Reserve); also known as retainer pay.

§ 63.4 Policy.

It is the policy of the Uniformed Services to honor a former spouse's request for direct payment from a given member's retired pay in enforcement of a court order that provides for a alimony, child support, or division of property, when the terms, conditions, and requirements in this part are satisfied.

§ 63.5 Responsibilities.

(a) The Assistant Secretary of Defense (Comptroller) shall establish policy and procedures, provide guidance, coordinate changes with the Uniformed Services, and monitor the implementation of this part within the Department of Defense.

(b) The Secretaries of the Military Departments and Heads of the other Uniformed Services shall implement this part.

§ 63.6 Procedures.

(a) *Eligibility of former spouse*. (1) A former spouse of a member is eligible to receive direct payment from the retired pay of that member only pursuant to a court order that satisfies the requirements and conditions specified in this part. In the case of a division of property, the court order must specifically provide that payment is to be made from disposable retired pay.

(2) For establishing eligibility for direct payment under a court order that provides for a division of retired pay as property, a former spouse must have been married to the member for 10 years or more, during which the member performed 10 years or more of creditable service. There is no 10-year marriage requirement for payment of child support, alimony, or both.

(b) *Application by former spouse.* (1) A former spouse shall deliver to the designated agent of the member's Uniformed Service a signed DD Form 2293, Request for Former Spouse Payments from Retired Pay, or a signed statement that includes:

(i) Notice to make direct payment to the former spouse from the member's retired pay.

(ii) A copy of the court order and other accompanying documents certified by an official of the issuing court that provides for payment of child support, alimony, or division of property.

(iii) A statement that the court order has not been amended, superseded, or set aside.

(iv) Sufficient identifying information about the member to enable processing of the application. The identification should give the member's full name, social security number, and Uniformed Service.

(v) The full name, address, and social security number of the former spouse.

(vi) Before payment, the former spouse shall agree personally that any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate.

(vii) As a condition precedent to payment, the former spouse shall agree personally to notify the designated agent promptly if the operative court order upon which payment is based is vacated, modified, or set aside. This shall include notice of the former spouse's remarriage if all or a part of the payment is for alimony or notice of a change in eligibility for child support payments under circumstances of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payment to a former spouse from retired pay.

(2) If the court order is for a division of retired pay as property and it does not state that the former spouse satisfied the eligibility criteria found in paragraph (a)(2) of this section, the former spouse shall furnish sufficient evidence for the designated agent to verify that the requirement was met.

(3) The notification of the designated agent shall be accomplished by certified or registered mail, return receipt requested, or by personal service. Effective service is not accomplished until a complete application providing all information required by this part is received in the office of the designated agent, who shall note the date and time of receipt on the notification document.

(4) Not later than 90 days after effective service, the designated agent shall respond to the former spouse as follows:

(i) If the court order will be honored, the former spouse shall be informed of the date that payments tentatively begin; the amount of each payment; the amount of gross retired pay, total deductions, and disposable retired pay (except in cases where full payment of a court-ordered fixed amount will be made); and other relevant information if applicable: or (ii) If the court order will not be honored, the designated agent shall explain in writing to the former spouse why the court order was not honored.

(5) The designated agent for each Uniformed Service is:

(i) Army: Commander, Army Finance and Accounting Center, Attn: FINCL-G, Indianapolis, IN 46249-0160, (317) 542-2155.

(ii) Navy: Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2087, (216) 522-5301.

(iii) Air Force: Commander, Air Force Accounting and Finance Center, ATTN: JAL, Denver, CO 80279-5000, (303) 370-7524.

(iv) Marine Corps: Commanding Officer, Marine Corps Finance Center (Code AA), Kansas City, MO 64197-0001, (816) 926-7103.

(v) U.S. Coast Guard, Commanding Officer (L), Pay and Personnel Center, 444 Quincy Street, Topeka, Kansas 66683-3591; (913) 295-2516.

(vi) Office of General Counsel, Department of Health and Human Services, room 5362, 330 Independence Avenue SW., Washington, DC 20201, (202) 475-0153.

(vii) U.S. Coast Guard, Commanding Officer (L), Pay and Personnel Center, 444 Quincy Street, Topeka, Kansas 66683-3591; (913) 295-2516.

(6) U.S. Attorneys are not designated agents authorized to receive court orders or garnishments under this part.

(c) *Review of Court Orders.* (1) The court order must be regular on its face, meaning that it is issued by a court of competent jurisdiction in accordance with the laws of the jurisdiction.

(2) The court order must be legal in form and must include nothing on its face that provides reasonable notice that it is issued without authority of law. It is required that the court order be authenticated or certified within 90 days immediately preceding its service on the designated agent.

(3) The court order must be a final decree.

(4) If the court order was issued while the member was on active duty and the member was not represented in court, the court order or other court documents must certify that the rights of the member under the "Soldiers' and Sailors' Civil Relief Act of 1940" (50 U.S.C. Appendix 501-591) were complied with.

(5) Sufficient information must be contained in the court order to identify the member.

(6) For court orders that provide for the division of retired pay as property, the following conditions apply:

(i) The court must have jurisdiction over the member by reason of (A) the member's residence, other than because of military assignment in the territorial jurisdiction of the court; (B) the member's domicile in the territorial jurisdiction of the court; or (C) the member's consent to the jurisdiction of the court.

(ii) The treatment of retired pay as property solely of the member or as property of the member and the former spouse of that member must be in accordance with the law of the jurisdiction of such court.

(iii) The court order or other accompanying documents served with the court order must show the former spouse was married to the member 10 years or more, during which the member performed at least 10 years of creditable service.

(7) Court orders awarding a division of retired pay as property that were issued before June 26, 1981, shall be honored if they otherwise satisfy the requirements and conditions specified in this part. A modification on or after June 26, 1981, of a court order that originally awarded a division of retired pay as property before June 26, 1981, may be honored for subsequent court ordered changes made for clarification, such as the interpretation of a computation formula in the original court order. For court orders issued before June 26, 1981, subsequent amendments after that date to provide for a division of retired pay as property are unenforceable under this part. If the court order awarding a division of retired pay as property is issued on or after June 26, 1981, subsequent modifications of that court order shall be honored if they otherwise satisfy the requirements and conditions specified in this part.

(8) In the case of a division of property, the court order must provide specifically for payment of a fixed amount expressed in U.S. dollars or payment as a percentage or fraction of disposable retired pay. Court orders specifying a percentage or fraction of retired pay shall be construed as a percentage or fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court.

(d) *Garnishment Orders.* (1) If a court order provides for the division of property other than retired pay in addition to an amount of disposable retired pay to be paid to the member's former spouse, the former spouse may garnish that member's retired pay in order to enforce the division of property. The limitations of 15 U.S.C. 1673(a) and the limitations of § 63.6(e) of this part apply in determining the amount payable to a former spouse.

- (2) The designated agents authorized to receive service of process of garnishment orders under this part shall be those listed in § 63.6(b)(5) of this part.
- (3) Garnishment orders under this part for enforcement of a division of property other than retired pay shall be processed in accordance with 5 CFR part 581 to the extent that the procedures are consistent with this part.
- (e) *Limitations.* (1) Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:
- (i) 50 percent of the disposable retired pay for all court orders and garnishment actions paid under this part.
 - (ii) 65 percent of the disposable retired pay for all court orders and garnishments paid under this part and garnishments under 42 U.S.C. 659.
- (2) Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized deductions. Disposable retired pay does not include annuitant payments under 10 U.S.C. chapter 73. For court orders issued on or before November 14, 1986 (or amendments thereto), disposable retired does not include retired pay of a member retired for disability under 10 U.S.C. chapter 61. The authorized deductions are:
- (i) Amounts owed to the United States.
 - (ii) Fines and forfeitures ordered by a court-martial.
 - (iii) Amounts waived in order to receive compensation under title 5 or 38 of the U.S. Code.
 - (iv) Federal employment taxes and income taxes withheld to the extent that the amount deducted is consistent with the member's tax liability, including amounts for supplemental withholding under 26 U.S.C. 3402(I), when the member presents evidence to the satisfaction of the designated agent that supports such withholding. State employment taxes and income taxes when the member makes a voluntary request for such withholding from retired pay and the Uniformed Services have entered into an agreement with the State concerned for withholding from retired pay.
 - (v) Premiums paid as a result of a election under 10 U.S.C. chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this part.
 - (vi) The amount of retired pay of the member under 10 U.S.C. chapter 61 computed using the percentage of the member's disability on the date, when the member was retired (or the date on which the member's name was placed on the temporary disability retirement list), for court orders issued after November 14, 1986.
 - (vii) Other amounts required by law to be deducted.
- (f) *Notification of Member.* (1) As soon as possible, but not later than 30 calendar days after effective service of a court order or garnishment action under this part, the designated agent shall send written notice to the affected member at his or her last known address.
- (2) This notice shall include:
- (i) A copy of the court order and accompanying documentation.
 - (ii) An explanation of the limitations placed on the direct payment to a former spouse from a member's retired pay.
 - (iii) A request that the member submit notification to the designated agent if the court order has been amended, superseded, or set aside. The member is obligated to provide an authenticated or certified copy of the operative court documents when there are conflicting court orders.
 - (iv) The amount or percentage that will be deducted if the member fails to respond to the notification as prescribed by this part.
 - (v) The effective date that direct payments to the former spouse tentatively will begin.

(vi) Notice that the member's failure to respond within 30 days from the date that the notice is mailed may result in the payment of retired pay as provided in the notification.

(vii) That if the member submits information in response to this notification, the member thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

(3) If the member responds to the notification, the designated agent shall consider the response and will not honor the court order whenever it is shown that the court order is defective, or the court order is modified, superseded, or set aside.

(g) *Designated agent liability.* (1) The United States and any officer or employee of the United States will not be liable with respect to any payment made from retired pay to any member or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this part.

(2) An officer or employee of the United States, who under this part has the duty to respond to interrogatories, will not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him or her in carrying out any of the duties that directly or indirectly pertain to answering such interrogatories.

(3) If a court order on its face appears to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court has obtained personal jurisdiction over the member.

(4) Whenever a designated agent is effectively served with interrogatories concerning implementation of this part, the designated agent shall respond to such interrogatories within 30 calendar days of receipt or within such longer period as may be prescribed by applicable State law.

(h) *Payments.* (1) Subject to a member's eligibility for retired pay, effective service of a court order, and the limitations and requirements of this part, the Uniformed Service concerned shall begin payments to the former spouse not later than 90 days after the date of effective service.

(2) Payments shall conform with the normal pay and disbursement cycle for retired pay. Payments may be expressed as fixed in amount or as a percentage or fraction of disposable retired pay. With regard to payments based on a percentage or fraction of disposable retired pay, the amount will change in direct proportion and at the effective date of future cost-of-living adjustments that are authorized, unless the court order directs otherwise.

(3) Payments terminate on the date of the death of the member, death of the former spouse, or as stated in the applicable court order, whichever occurs first. Payments shall be terminated or shall be reduced upon the occurrence of a condition that requires termination or reduction under applicable State law.

(4) When several court orders are served with regard to a member's retired pay, payment shall be satisfied on a first-come, first-served basis within the amount limitations prescribed in paragraph (e) of this section.

(5) If conflicting court orders are served on the designated agent that direct that different amounts be paid during a month to the same former spouse from a given member's retired pay, the designated agent shall authorize payment on the court order directing payment of the least amount. The difference in amounts on conflicting court orders shall be retained by the designated agent pending resolution by the court that has jurisdiction or by agreement of the parties. The amount retained shall be paid as provided in a subsequent court order or agreement. The total of all payments plus all moneys retained under this paragraph shall be within the limitation prescribed in paragraph (e) of this section.

(6) The designated agent shall comply with a stay of execution issued by a court of competent jurisdiction and shall suspend payment of disputed amounts pending resolution of the issue.

(7) When service is made and the identified member is found not to be currently entitled to payments the designated agent shall advise the former spouse that no payments are due from or payable by the Uniformed Service to the named individual. If the member is on active duty when service is

accomplished, the designated agent shall retain the application until the member's retirement. In such case, payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the member first becomes entitled to receive retired pay. If the member becomes entitled to receive retired pay more than 90 days after first being notified under paragraph (f) of this section, the notification procedures prescribed by that section shall be repeated by the designated agent.

(8) If moneys are only temporarily exhausted or otherwise unavailable, the former spouse shall be fully advised of the reason or reasons why and for how long the moneys will be unavailable. Service shall be retained by the designated agent and payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the member becomes entitled to receive retired pay. If the member becomes entitled to receive retired pay more than 90 days after first being notified under paragraph (f) of this section, the notification procedures prescribed by that section shall be repeated by the designated agent.

(9) The order of precedence for disbursement of retired pay when the gross amount is not sufficient to permit all authorized deductions and collections shall follow volume I, part 3, section 7040, "Order of Payment," in the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies. Court-ordered payments to a former spouse from retired pay shall be enforced over voluntary deductions and allotments.

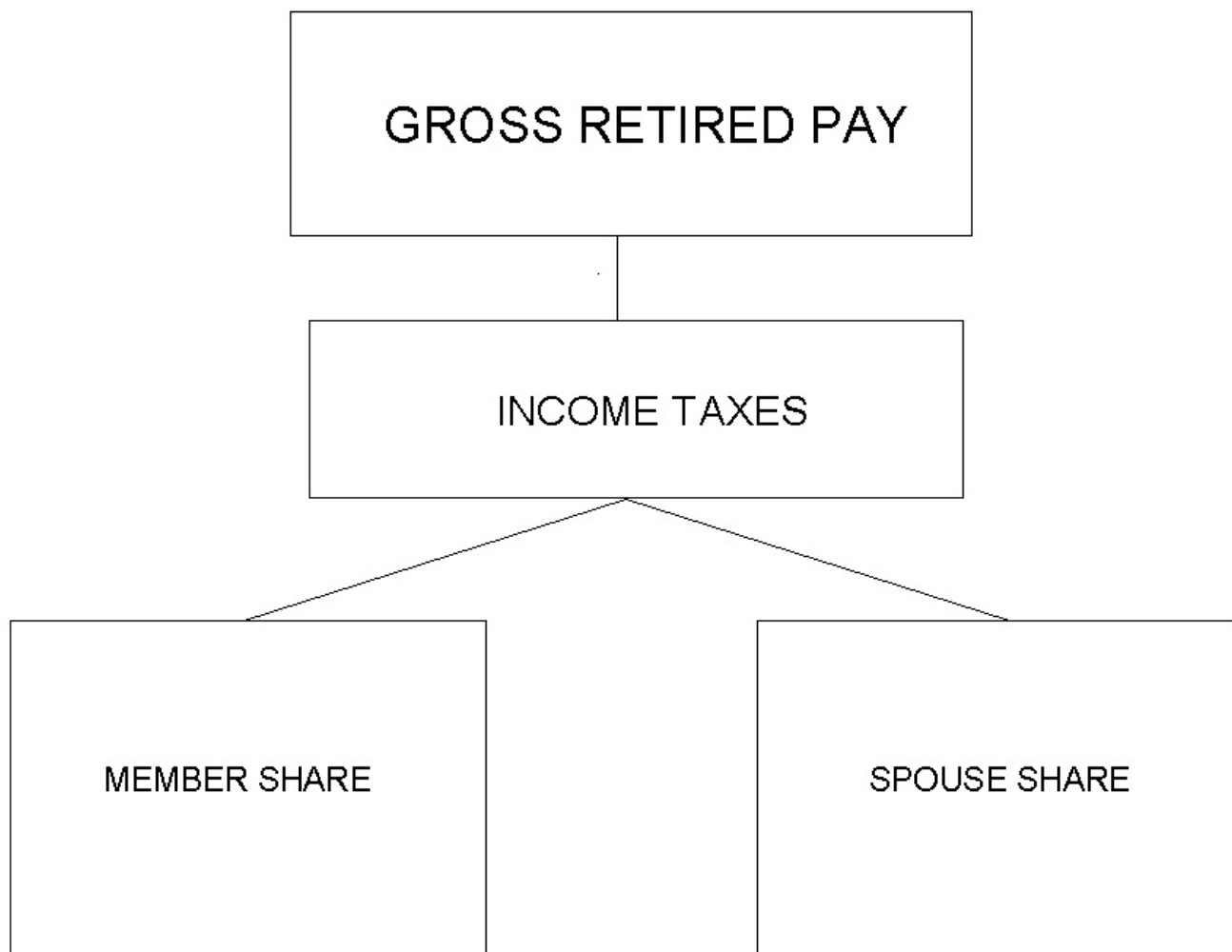
(10) Payments made shall be prospective in terms of the amount stated in the court order. Arrearages will not be considered in determining the amount payable from retired pay.

(11) No right, title, or interest that can be sold, assigned, transferred, or otherwise disposed of, including by inheritance, is created under this part.

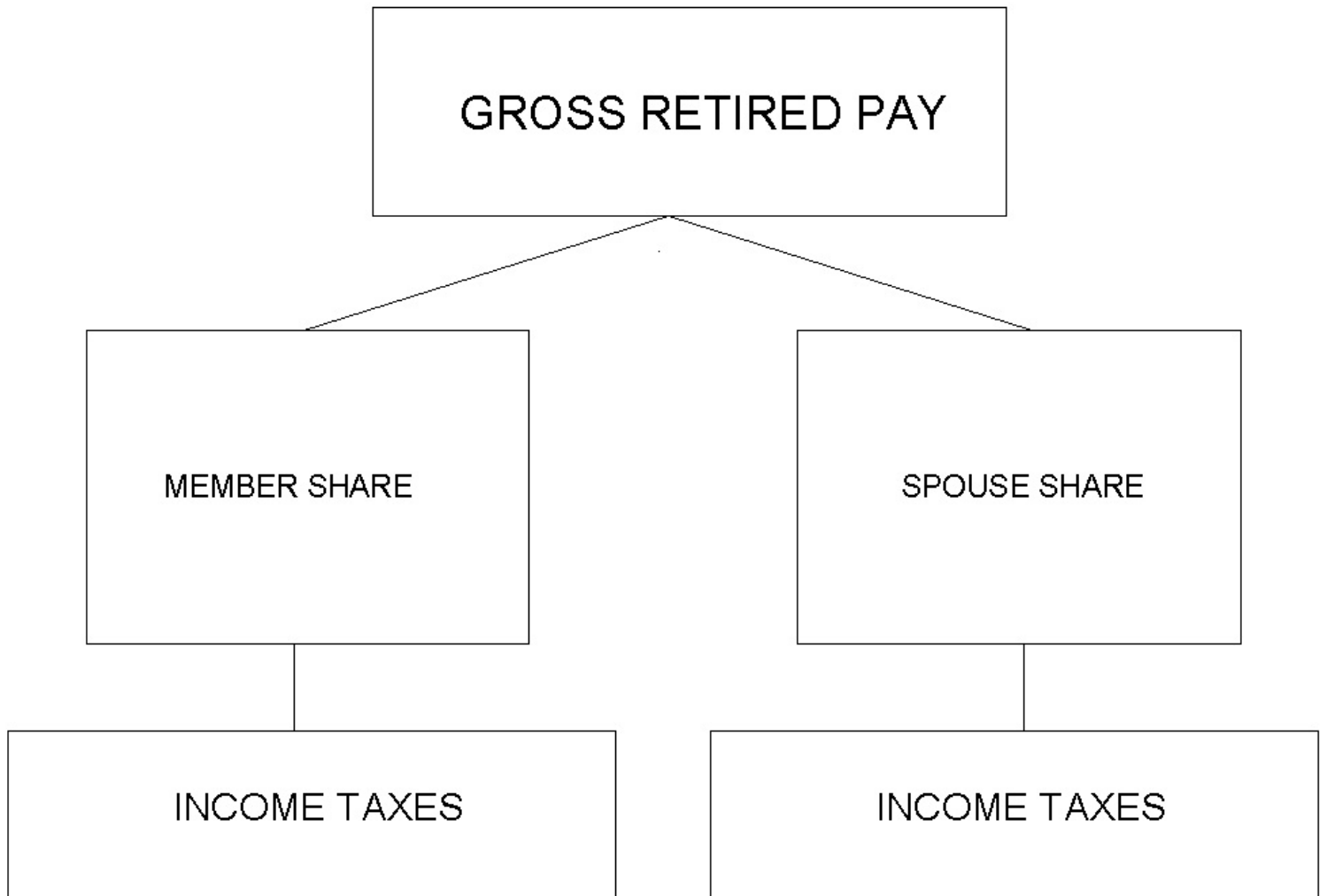
(12) At the request of the designated agent, the former spouse may be required to provide a certification of eligibility that attests in writing to the former spouse's continued eligibility and that includes a notice of change in status or circumstances that affect eligibility. After notice to the former spouse, payments to the former spouse may be suspended, or terminated, when the former spouse fails to comply, or refuses to comply, with the certification requirement.

(i) *Reconsideration.* A former spouse or member may request that the designated agent reconsider the designated agent's determination in response to service of an application for payments under this part or the member's answer to the designated agent with respect to notice of such service. For reconsideration, the request must express the issues the former spouse or the member believes were incorrectly resolved by the designated agent. The designated agent shall respond to the request for reconsideration, giving an explanation of the determination reached. (Approved by the Office of Management and Budget under control numbers 0704-0160 and 0704-0182) [50 FR 2667, Jan. 18, 1985, as amended at 52FR 25215, July 6, 1987]

“Old” Disposable Pay Distribution



"New" Disposable Pay Distribution



4. I HAVE ENCLOSED ALL PERTINENT DOCUMENTATION TO INCLUDE: (X as applicable)									
<input type="checkbox"/>	a. A copy of the operative court order and other accompanying documents that provide for payment of child support, alimony or a division of retired pay as property, containing a certification dated by the clerk of the court within 90 days preceding the date the application is received by the designated agent.								
<input type="checkbox"/>	b. Evidence of the date(s) of my marriage to the member if the application is for the direct payment of a division of the member's disposable retired pay as property. Give MARRIAGE DATE (YYYYMMDD) in this block unless stated in court order.								
<input type="checkbox"/>	c. If payment request includes child support, give name(s) and birth date(s) of child(ren): <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="width: 70%; text-align: center; padding: 2px;">(1) NAME OF CHILD (Last, First, Middle Initial)</th> <th style="width: 30%; text-align: center; padding: 2px;">(2) DATE OF BIRTH (YYYYMMDD)</th> </tr> </thead> <tbody> <tr> <td style="height: 20px;"></td> <td></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> </tbody> </table>	(1) NAME OF CHILD (Last, First, Middle Initial)	(2) DATE OF BIRTH (YYYYMMDD)						
(1) NAME OF CHILD (Last, First, Middle Initial)	(2) DATE OF BIRTH (YYYYMMDD)								
<input type="checkbox"/>	d. Other information (please identify) or remarks.								
<div style="display: flex; justify-content: space-between;"> <div style="width: 65%;"> 5a. APPLICANT'S SIGNATURE </div> <div style="width: 30%;"> b. DATE SIGNED </div> </div>									
<p style="text-align: center; margin-top: 0;">INSTRUCTIONS FOR COMPLETION OF DD FORM 2293</p> <p>GENERAL. These instructions govern an application for direct payment from retired pay of a Uniformed Service member in response to court ordered child support, alimony, or a division of property, under the authority of 10 USC 1409.</p> <p>SERVICE OF APPLICATION. You may serve the application by mail on the appropriate Uniformed Service designated agent. The Uniformed Services' designated agents are:</p> <p>(1) ARMY, NAVY, AIR FORCE, AND MARINE CORPS: Attn: DTAS-CLAGAG, Assistant General Counsel for Garnishment Operations, DEFENSE FINANCE AND ACCOUNTING SERVICE - CLEVELAND, P.O. Box 993002, Cleveland, OH 44199-0002;</p> <p>(2) COAST GUARD: Commanding Officer (JGL), United States Coast Guard, Human Resources Service and Information Center, 444 S.E. Quincy Street, Topeka, KS 66683-3591;</p> <p>(3) PUBLIC HEALTH SERVICE: Attn: Retired Pay Section, CE, Division of Commissioned Personnel, PUBLIC HEALTH SERVICE, Room 4-50, 5600 Fishers Lane, Rockville, MD 20857-0001;</p> <p>(4) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION: Same as U.S. Coast Guard.</p> <p>IMPORTANT NOTE: Making a false statement or claim against the United States Government is punishable. The penalty for willfully making a false claim or false statement is a maximum fine of \$10,000 or maximum imprisonment of 5 years or both (18 USC 287 and 1001).</p>									
<p>ITEM 1.</p> <p>a. Enter full name as it appears on the court order.</p> <p>b. Enter current name if different than it appears on court order.</p> <p>c. Enter Social Security Number.</p> <p>d. Enter current address.</p> <p>ITEM 2.</p> <p>a. Enter former spouse's full name as it appears on the court order.</p> <p>b. Enter former spouse's Social Security Number.</p> <p>c. Enter former spouse's branch of service.</p> <p>d. Enter former spouse's current address, if known.</p> <p>ITEM 3. Read the Request Statement carefully.</p>	<p>ITEM 4. A certified copy of a court order can be obtained from the court that issued the court order. Other documents include, but are not limited to, final divorce decree, property settlement order, and any appellate court orders. If the court order does not state that the former spouse was married to the member for ten years or more while the member performed ten years creditable service and the request is for payment of a division of property, the applicant must provide evidence to substantiate the ten years' marriage condition. Additional evidence must show that the ten years' requirement has been met, including: Uniformed Service orders, marriage certificate, and other documents that establish the period of marriage. Other information or documents included with the request should be clearly identified by the document's title and date. Remarks may be provided to clarify specific points.</p> <p>ITEM 5. Self-explanatory.</p>								

DD FORM 2293 (BACK), JAN 2002

