

Strafford

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*Presenting a live 90-minute webinar with interactive Q&A*

## **Military Divorce: Dividing Military Retirement Benefits**

Navigating Unique Rules for Pension Division and Survivor Annuity

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TUESDAY, JUNE 25, 2013

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Wm. John Camp, Partner, Westmoreland Patterson Moseley & Hinson, Macon, Ga.

G. Brentley Tanner, Partner, Sullivan & Tanner, Raleigh, N.C.

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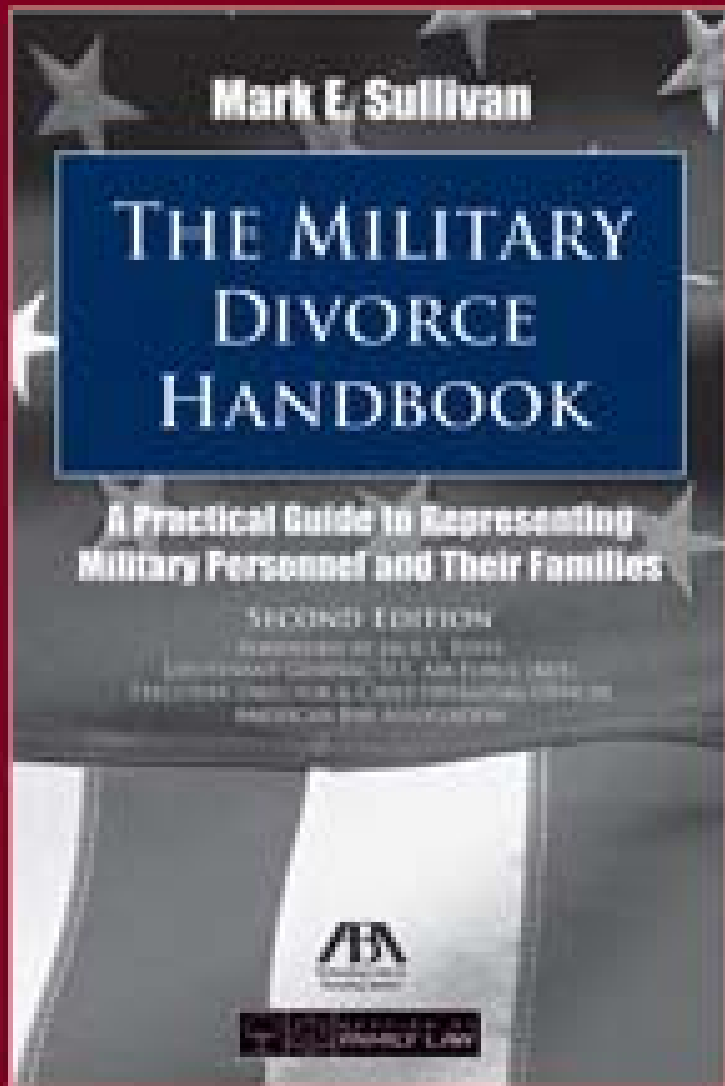
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# MILITARY DIVORCE: DIVIDING MILITARY RETIREMENT BENEFITS



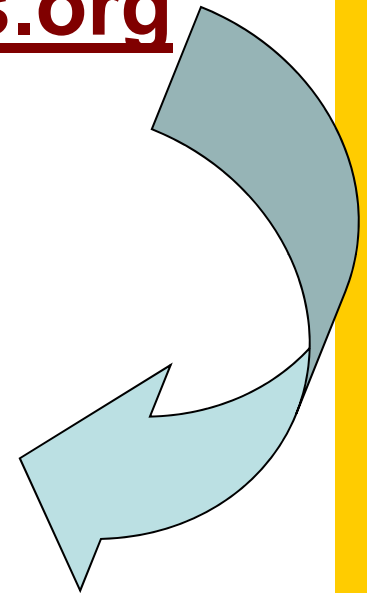
Wm. John Camp  
[www.wpmlegal.com](http://www.wpmlegal.com)

Brent Tanner  
[www.ncfamilylaw.com](http://www.ncfamilylaw.com)



[www.ababooks.org](http://www.ababooks.org)

***“BEST  
SELLERS”***



2<sup>nd</sup> Ed., August 2011

# **We'll learn...**

- **Federal Rules**
- **State Structures**
- **Basic Concepts behind Pension Division**

# An obstacle course (roadblocks to pension division)

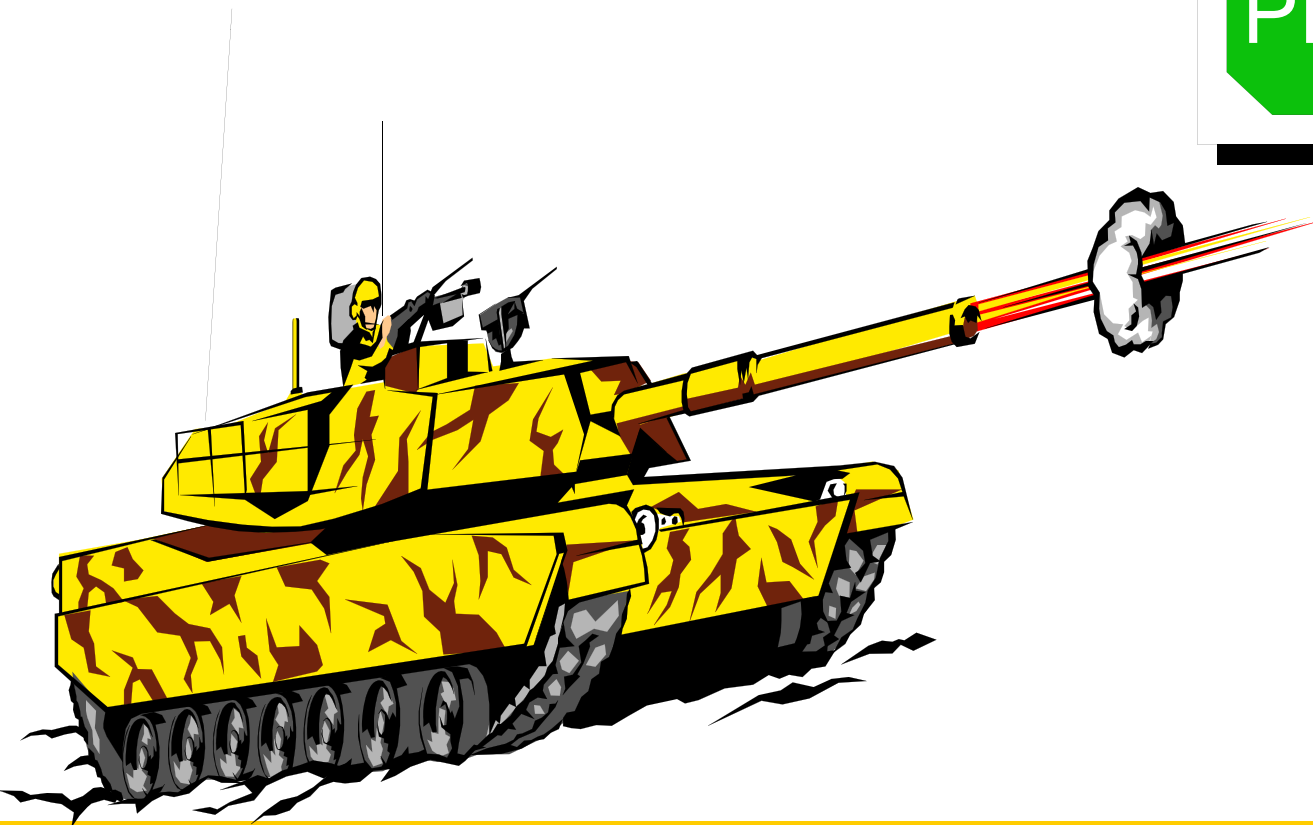
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# TARGET PRACTICE

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# “Who ya’ gonna call?”

- **Silent Partner info-letters**
- **[www.nclamp.gov](http://www.nclamp.gov)**
- **SEVEN on military pension  
division**

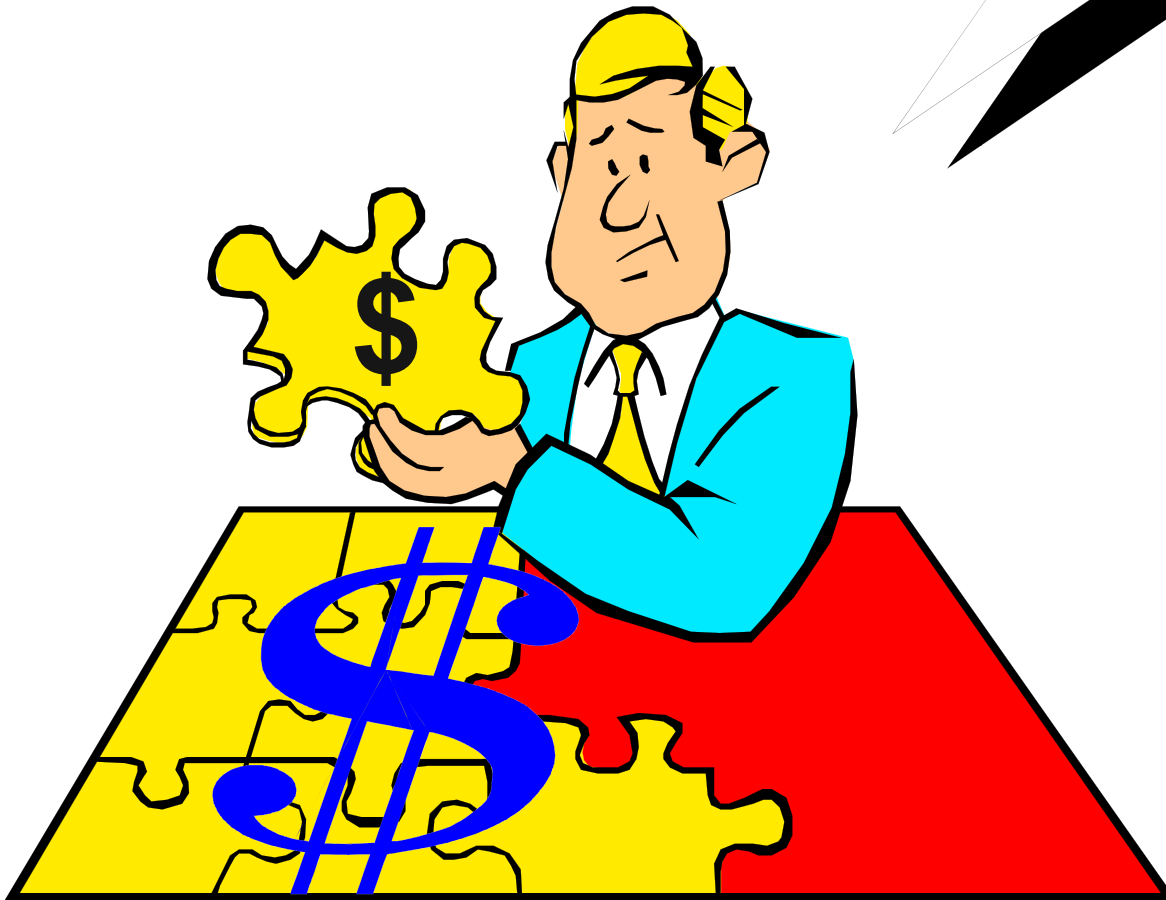
# Uniformed Services Former Spouses' Protection Act

- **Go to 10 U.S.C. 1408**
  - Army, Navy, Air Force, Marine Corps, Coast Guard
  - Reserves, National Guard
  - Commissioned Corps of NOAA, Pub. Health Svc.

# What Did USFSPA Do?

- **Allowed div'n of military pensions upon divorce**
- **Let states write rules**
- **Limited state court jurisdiction over division of pensions, AND**
- **Allowed direct pay from DFAS [Defense Finance & Acctg. Svc.]**

**How do you  
divide a pension?**



# Col. Bill Roberts



# Mrs. Roberts...



## OPEN-HEART SURGERY??

# Is it marital property?



- Unvested pension is sep. property in ARK., IND., ALA.
- P.R. doesn't divide mil. pensions
- Rest of states don't require "vesting" for a pension to be divisible

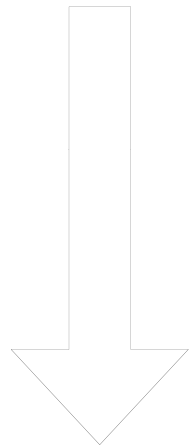


***IS IT A...***



**DISABILITY PAY =**  
***NOT DIVISIBLE!***

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**“IT’S NOT A PENSION”**



## **VA with a Vengeance**

**CRDP and CRSC – “The Evil Twins”**

**SILENT PARTNER**

# CRDP to the Rescue

- **CRDP = Concurrent Retirement & Disability Pay**
- **Available if  $\geq 50\%$  disability rating**
- **Return of waived military retired pay**
- **But... NO CRDP 40% or less**



# Post-Divorce VA Elections

- **NO division of VA payments**
- **NO div'n of waived pension**
- **BUT... duty of indemnification!**

**FEDERAL  
JURISDICTIONAL LIMITS:**

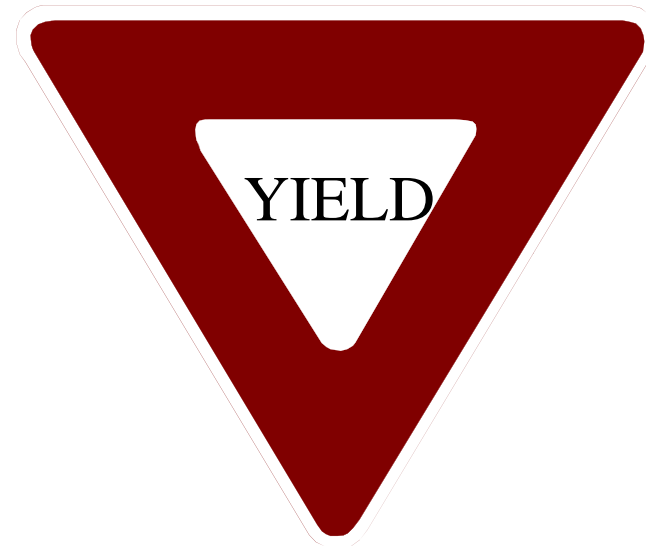
**10 USC 1408(c)(4)**

# PENSION JURISDICTION IS LIMITED TO:

*-Domicile*

*-Consent*

*-Residence not due to  
military assignment*



# DOMICILE

- **PHYSICAL PRESENCE**  
**(excluding temporary absences)**
- **INTENT AS SHOWN BY...**
  - state income taxes
  - car title, registration
  - driver's license
  - voting
  - home ownership
  - in-state tuition
  - voting
  - bank accounts



# Domicile of Servicemembers...

- **Servicemembers**  
**Civil Relief Act: 50**  
**U.S.C. App. § 571**  
**and 595 [state tax,**  
**voting]**



# Leave-and-Earnings Statement

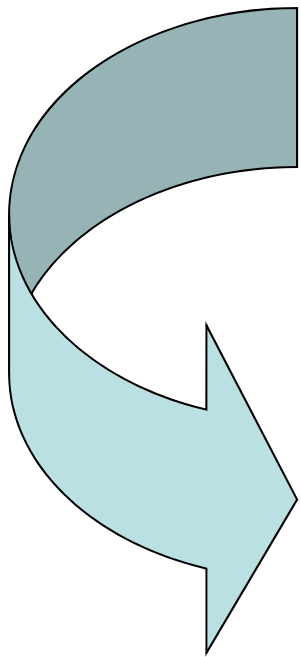
DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT													
ID	NAME (Last, First, MI)			SOC.SEC.NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVERED		
					O4	790401	20	888888	ARMY	4809	1-30 SEP 99		
ENTITLEMENTS				DEDUCTIONS				ALLOTMENTS				SUMMARY	
	Type	Amount		Type	Amount		Type	Amount		+Amt Fwd		.00	
A	BASE PAY	4566.60		FEDERAL TAXES	294.91		DISCRETIONARY ALT	525.00		+Tot Ent		6,091.86	
B	BAS	157.26		FICA-SOC SECURITY	283.13					-Tot Ded		681.59	
C	BAH	1368.00		FICA-MEDICARE	66.22					-Tot Allt		525.00	
D				SGLI FOR 200,000	16.00					=Net Amt		4,885.27	
E				DENTAL	21.33					-Cr Fwd		.00	
F										=EOM Pay		4,885.27	
G													
H													
I													
J													
K													
L													
M													
N													
O													
	TOTAL	6,091.86						525.00					
LEAVE	BF Bal	Ernd	Used	Cr Fwd	ETS	Wage	FED TAXES	WagePeriod	Wage YTD	M/S	Ex	Add Tax	Tax Ytd
	52.5	30.0	14	68.5				4566.60	41099.40	M	09	.00	3341.71
FICA TAXES	Wage Period	Soc Wage YTD	Soc Tax	YTD STATE TAXES	Cd	Wage Period	Wage YTD	M/S/N	Ex	O2	Tax YTD		
	4566.60	41099.40	2548.98		WV	.00	.00	M			.00		
PAY DATA	BAH Type	BAH Depn	BAH Zip	Rent Amt	Share	Stat	JFTR	Depns	2d JFTR	BAS Type	Charity YTD	TPC	PACIDN
	W/DEP	SPOUSE	22041	.00	1						.00		DEDOKEAA
REMARKS													
YTD Entitlements: 54826.74 YTD													
<p>JANUARY 1, 2000: WILL YOU GET PAID?          YES! DFAS IS READY. VISIT  <a href="http://www.dfas.mil/y2k">HTTP://WWW.DFAS.MIL/Y2K</a> FOR MORE INFORMATION          ON HOW YOU CAN PREPARE FOR Y2K.          TRICARE QUESTIONS? CALL LOCAL TRICARE          SERVICE CENTER, MILITARY HOSPITAL HEALTH          BENEFITS ADVISOR OR SEND E-MAIL TO:          TRICARE_HELP@OTSG-AMEDD.ARMY.MIL</p>													
<p>THE DFAS-IN CENTER DEVELOPED A NEW FEATURE FOR ACTIVE DUTY          IDENTIFICATION NUMBER (PIN). ALL YOU NEED IS A PIN AND SSN          CALL DSN 699-0299 OR COMMERCIAL 1-317-510-0299.</p>													
<p>ARMY PERSONNEL TO OBTAIN INFORMATION BY USING A PERSONAL          AND A TOUCH TONE PHONE TO ACCESS YOUR LATEST PAY INFORMATION.</p>													

West Virginia

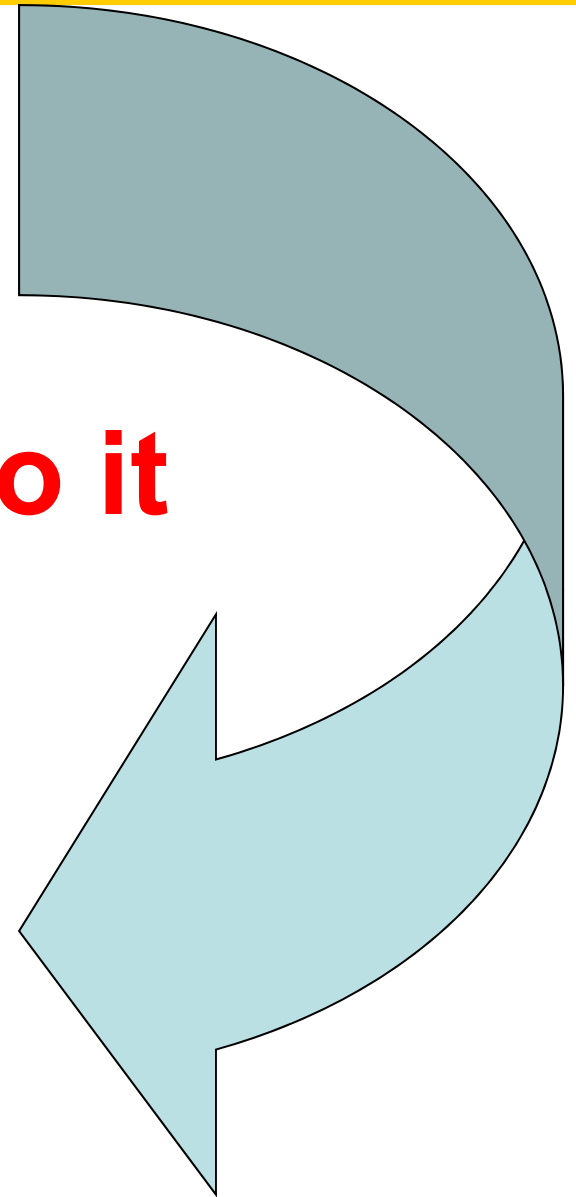
State of Residence for Tax Purposes

**>Filing the  
lawsuit... or**

**>Responding to it**



**C O N S E N T**



# Consent to Jurisdiction?

- **NO - Servicemembers  
Civil Relief Act: 50  
U.S.C. App. § 522 (c)**



Residence test: ***SM resides in State A***  
***not due to military orders***

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



# Summary of Roadblocks

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- *Ask questions;*
- *Obtain competent counsel*
- *Shop around*

Defensive  
Lawyering!



# What is Spouse's Share?

- 50% of Pension?
- ONLY if married during SM's entire career...
  
- **OTHERWISE: 50% of marital share**



# Pension division formulas

- **Majority of states: 50% X “marital fraction” X final retired pay**

# Pension division formulas

- **Minority of states: 50% X “marital fraction” X retired pay earned as of divorce date**

# **"10-YEAR RULE" UNDER U.S.F.S.P.A.**

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- **COURT ORDER...**
- **+ 10 YRS OF CREDITABLE SERVICE**
- **+ 10 YRS OF MARRIAGE (concurrent with svc.)**
- **GETS DIRECT PAYMENT FROM DFAS**
- **NOT a rule of divisibility!**

# Wording the pension division clause

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



# Wording the pension division clause

- **YEARS OF MARRIAGE, OVERLAPPING...**
- **YEARS OF MILITARY SERVICE**
- **JURISDICTIONAL FINDINGS**
- **50% MAXIMUM**

# **“All Clauses Considered”**

**– SET DOLLAR AMOUNT**

**(favors SM - no COLA),**

**-or-**

**– % OF DISPOSABLE RETIRED PAY**

**-or-**

# “All Clauses Considered”

– FORMULA CLAUSE (when SM is not yet  
ret'd)

-or-

– HYPOTHETICAL

(favors SM - freezes grade/ years)

# RULES FOR DIRECT PAY ORDERS

- PAYMENT ONCE A MONTH
- FINAL DECREE OF DIVORCE...
- STARTING NO EARLIER THAN 90 DAYS  
AFTER SERVICE ON DFAS
- PROSPECTIVE ONLY-- NO ARREARS



# RULES FOR DIRECT PAY ORDERS

- **PMTS END AT DEATH OF RETIREE OR FORMER SPOUSE, WHICHEVER OCCURS FIRST**
- **CERTIFIED BY CLERK**
- **SERVICE ON DFAS BY CERT. MAIL, RETURN RECEIPT...**
- **COVER SHEET: DD Form 2293**

# DFAS Website

- [www.dfas.mil](http://www.dfas.mil)
- **“Attorney Instructions  
for Dividing Ret’d Pay”**

# Helping COL Roberts

- Fixed dollar amount, OR
- Hypothetical award, and FIXED year pay tables

**Let's make  
a deal!**



# Guard/Reserve Cases

- Ret'd pay at age 60
- Retirement points
- Website: [www.hrc.army.mil](http://www.hrc.army.mil) >

Transitions>Reserve

Retirement>Calculate Ret'd Pay



# For those left behind -

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



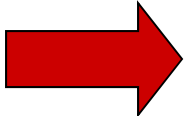
# SBP – Single Biggest Problem?

- **Continuity of payments when SM dies first**
- **Without it: “When soldier dies, pension dies”**

***SGLI = Servicemembers  
Group Life Insurance***

***\$400,000 death benefit!***

# Survivor Benefit Plan

- **Benefit = 55% of base amount**
- **So if \$2,000 = base amt., benefit = \$1,100/mo.**
- **Cost (fm retired pay) = 6.5% of base amt for “spouse/former spouse coverage”**
- **\$2,000/mo. base amt  \$130/mo. (premium)**



## **SBP DEFINED**

- **Court can order SBP coverage**
- **Unitary – cannot divide, share with your NEW spouse!**
- **Only ONE adult beneficiary**
- **Premiums come “off the top”**

***SGLI = \$400,000***

But... **Ridgway case**

454 U.S. 46 (1981)



# **SBP Election**

- **At retirement for A/D members**
- **Turn-down requires spousal consent**
- **Guard/Reserve choices... [use DD Form 2656-5]**

# SURVIVOR BENEFIT PLAN

- **One-year deadline**
  - From divorce if SM makes the election [submits application] for FS coverage



*Dealing with Deadlines*

# SURVIVOR BENEFIT PLAN

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



*Dealing with Deadlines*

# **SBP Election**

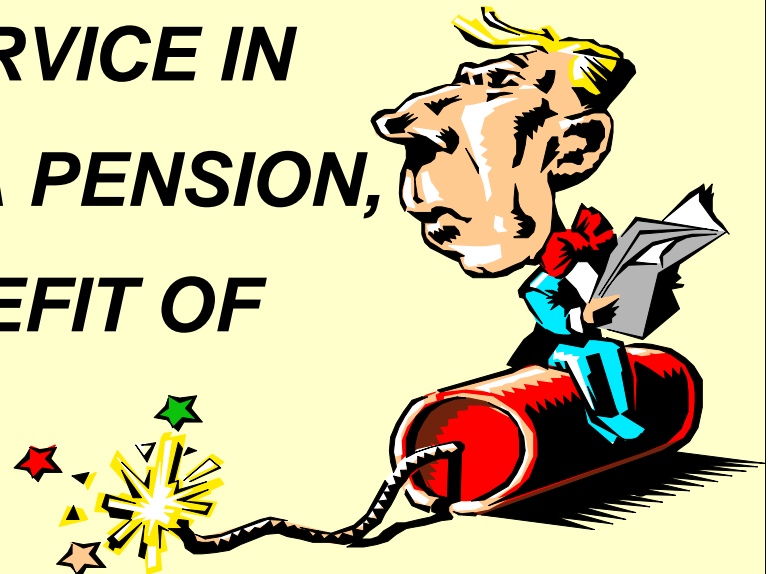
- **A/D election – DD Form 2656-1**
- **“Deemed Election” by former spouse –  
DD Form 2656-10**
- **“Open Season”**

# Typical Clause...

- ***Sara Roberts shall receive 46.5% of the retired pay of Colonel Bill Roberts. She shall also be his Survivor Benefit Plan beneficiary with his full retired pay chosen as the base amount.***

## **TYPICAL CLAUSE???**

***“SARA ROBERTS SHALL RECEIVE  
46.5% OF ALL THE MILITARY  
RETIREMENT BENEFITS OF COL BILL  
ROBERTS, INCLUDING EVERYTHING  
ATTRIBUTABLE TO HIS SERVICE IN  
THE MILITARY TOWARDS A PENSION,  
AND EVERY PENSION BENEFIT OF  
HIS.”***





## SBP Strategies

- **Strategies for COL Roberts...**
  - Require FS to reimburse COL Roberts for premium
  - Lower the share of FS so that, in effect, she bears entire burden of payment
  - (e.g., 30% nominal share for FS, 25.13% after premium shift!)
  - Mirror Benefit – change BASE to reflect “life share”

## SBP Strategies

- **SBP not available if FS remarries before age 55 - suspended**
  - But reinstated if later divorce...
  - Or death of new spouse
  - Or annulment

# **“Who ya’ gonna call?”**

- **Use of consulting expert**
- **“Family Law Specialist”**
- **American Academy of Matrimonial**

**Lawyers: [www.aaml.org](http://www.aaml.org)**

# “Who ya’ gonna call?”

- **ABA Family Law Section’s Mil. Committee:**  
**[www.abanet.org/family/military](http://www.abanet.org/family/military)**
- **DOD SBP website:**  
**<http://militarypay.defense.gov/survivor/>**
- **ABA LAMP Committee:**  
**[www.abanet.org/legalservices/lamp/](http://www.abanet.org/legalservices/lamp/)**
- **North Carolina LAMP Committee:**  
**[www.nclamp.gov/](http://www.nclamp.gov/)**

# “Who ya’ gonna call?”

- DFAS WEBSITE: [www.dfas.mil](http://www.dfas.mil)
- ARMY RETIREMENT SERVICES:  
[www.armyg1.army.mil/rso/rso.asp](http://www.armyg1.army.mil/rso/rso.asp)

# The End



**John Camp, Warner Robins, GA**  
**Brent Tanner, Raleigh, NC**