

MILITARY FAMILY LAW

2025



In Flanders Fields

In Flanders fields the poppies blow
Between the crosses, row on row,
That mark our place; and in the sky
The larks, still bravely singing, fly
Scarce heard amid the guns below.

We are the Dead. Short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie
In Flanders fields.

Take up our quarrel with the foe:
To you from failing hands we throw
The torch; be yours to hold it high.
If ye break faith with us who die
We shall not sleep, though poppies grow
In Flanders fields.

GOALS

- OVERVIEW OF APPROACHING A MILITARY FAMILY LAW CASE – Your “Ten Commandments” (40 min)
- FREE FORMS AND CHECKLISTS
- POST-HOWELL CASELAW. VA “Waivers” & Ignoring What We Don’t Like (10 min)
- Q&A

Commandment #1

Thou shalt comply with BOTH Servicemembers Civil Relief Acts (SCRA)

- ▶ Federal – 50 U.S.C. 3901 (Renumbered around 2020 from 501)
- ▶ State – RCW 38.42 (Not entirely consistent)
- ▶ CHECK SERVICE STATUS ON WEBSITE - <https://scra.dmdc.osd.mil/>
- ▶ Has the Servicemember been served?
 - ▶ Remember the Hague Convention, if applic.
 - ▶ Rules of the Country. (i.e. Germany)
- ▶ If Active Duty (Title 10, Title 14, NOT Title 32)
- ▶ **NO DEFAULT without appointment of counsel**
 - ▶ **\$55,000 per se damages**
- ▶ Default OK if served and Stay not invoked.
- ▶ New Family Law Provisions - 50 U.S.C. 3938
- ▶ Temporary Orders OK

Commandment #2

Thou shalt request these things in Discovery.

- ▶ L.E.S. -Leave and Earnings Statement
- ▶ Re-enlistment docs.
- ▶ T.S.P. Statements
- ▶ Guard/Reserves – Point Statement
- ▶ Death Gratuity beneficiary designation
- ▶ Retiree Statement (both sides)
- ▶ DD Form 214
- ▶ V.A. Disability Report
- ▶ G.I. Bill Statement
- ▶ Verification of DEERS enrollment

Commandment #3

Thou shalt consider almost all income for support purposes. RCW 26.19.071

- ▶ Specialty/Incentive Pay (Flight, Dive, Sub, Sea, Language, Jump, Med)
 - BAH (by Zip Code)
 - Consider issue of “in kind” pay where no BAH
- ▶ Family Sep. Allow.
- ▶ Imminent Danger
 - What is BAH Diff?
 - DSHS dispute
- ▶ Per Diems
- ▶ Clothing (Enlisted)
- ▶ Base pay
 - BAS (Officer v. Enlisted)

Per RCW 26.19.071 include all income

(1) **Consideration of all income.** All income and resources of each household shall be disclosed and considered by the court ...

parent's

VA “Disability” must be disclosed & can be included

Find the DOD pay schedules if you don't have an LES yet → 2025 in materials

Excluded - Attendant Care

RCW26.19.055 **Payments for attendant services in cases of disability.** Payments from any source, other than veterans' aid and attendance allowances or special medical compensation paid under 38 U.S.C. Sec. 314 (k) through (r), for services provided by an attendant in case of a disability when the disability necessitates the hiring of the services of an attendant shall be disclosed but shall not be included in gross income and shall not be a reason to deviate from the standard calculation.

Be aware of collection limits 50%-65%. But see Rose (SCOTUS) and VA “apportionment”

Commandment #4

Thou shalt become familiar with the LES – Leave & Earnings Statement

- ▶ See next slide.
- ▶ Also see materials at end of the Section.

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
	CAPORICCI DAVID FRANKLIN	*****5957	004	870613	20	000000	ARNG	5570	CHK DT 080229

ENTITLEMENTS		DEDUCTIONS		ALLOTMENTS		SUMMARY	
TYPE	AMOUNT	TYPE	AMOUNT	TYPE	AMOUNT		
A	BASIC PAY	FED INC TAX	392.50			+AMT FWD	
B	INCENTIVE PAY	FICA TAX	249.90			+TOT ENT 5,380.61	
C	HARDSHIP DUTY PAY	TSP CONTRIBUTION	378.00			-TOT DED 1,020.40	
D	SUBSISTENCE ALWS					-TOT ALMT	
E	BAH					-NET AMT 4,360.21	
F	FAM SEP ALWS					-CR FWD	
G	WITHHELD TAX REF					-EOM PAY	
H							
I							
J							
K							
L							
M							
N							
O							
	TOTAL					DIEMS	RET PLAN

LEAVE	BF BAL	ERND	USED	CR BAL	ETS BAL	LV LOST	LV PAID	USE/LOSE	FED TAXES	WAGE PERIOD	WAGE YTD	M/S	EX	ADD'L TAX	TAX YTD
	13.0	2.5		15.5		0	0	26.5		3387.10	1153.30	M	0	.00	131.31
FICA TAXES	WAGE PERIOD	SOC WAGE YTD	SOC TAX YTD	MED WAGE YTD	MED TAX YTD	STATE TAXES	ST WAGE PERIOD	WAGE YTD	M/S	EX	TAX YTD				
	3266.70	12942.00	802.40	12942.00	187.66	WA	3387.10	1153.30	M	01	.00				
PAY DATA	BAQ TYPE	BAQ DEPN	VHA ZIP	RENT AMT	SHARE	STAT	JFTR	DEPNS	2D JFTR	BAS TYPE	CHARITY YTD	TPC	PACIDN		
	W DEP	SPOUSE	99202									A			
Thrift Savings Plan (TSP)	BASE PAY RATE	BASE PAY CURRENT	SPEC PAY RATE	SPEC PAY CURRENT	INC PAY RATE	INC PAY CURRENT	BONUS PAY RATE	BONUS PAY CURRENT							
	9%	294.00	0%	.00	20%	84.00	0%	.00							
	TSP YTD DEDUCTIONS		DEFERRED		EXEMPT										
	1500.78		.00		1500.78										

REMARKS YTD ENTITLE 20416.15 YTD DEDUCT 4232.76

YOUR CHECK WAS SENT TO: WELLS FARGO BANK 121042882
 PHOENIX AZ 85003-18 AMOUNT: \$4,360.21
 ACCOUNT NUMBER: 0442032793 ACCOUNT TYPE: CHECKING
 COMPANY CODE: 914288 DIRECT DEPOSIT DATE: 02/29/08
 * AS OF 26 JUN 03, 026 HIGH TEMPO DEPLOYMENT DAYS ACCRUED
 SINCE 1 OCT 00 (OR SINCE ENTERING MILITARY SERVICE)
 TOTAL PERFORMANCE FY 08: UTA 00 AFTP 00 ET 00 ATA 00
 JPT 00 AAUTA 00 AANT 00 RMA 00 SUP IDT TNG 00
 MCOFT 00 RMAM 00 AT/ADT 150 FHDA 000
 PROMOTION/PAY DATE CHANGE PAY: \$31.20
 ACTIVE DUTY (AD) FOR TRAINING: 16 FEB 08 TO 30 FEB 08
 ADJUSTMENT PAY: FED INC TX WITHLD \$742.53
 HD SPEC PY-TYPE 3 16 FEB 08 - 30 FEB 08 \$50.00
 ACIP TYPE A 16 FEB 08 - 30 FEB 08 \$420.00
 YOUR CURRENT STATE CLAIMED IS: WASHINGTON
 SERVICEMEMBER GROUP LIFE INSURANCE COVERAGE: \$400,000
 YOUR SGLI DEDUCTION INCLUDES TRAUMATIC INJURY PROTECTION (TSGLI)
 SPOUSE SGLI COVERAGE: \$100,000
 LEGISLATIVE PAY INCREASE ADJUSTMENT
 PLEASE VERIFY YOUR STATE OF LEGAL RESIDENCE FOR STATE INCOME
 TAX PURPOSE. CONTACT YOUR PAYROLL OFFICE TO FILE A NEW DD FORM
 2058 TO CHANGE/ESTABLISH THE CORRECT STATE IMMEDIATELY.
 -WWW.MILITARYONESOURCE.COM HAS FREE FEDERAL AND STATE TAX
 PREPARATIONS AND FILING. LOF ON TO CONTACT EXPERT TAX

Commandment #5

Thou shalt carefully divide the military pension.

- ▶ Federal Pensions are not covered by ERISA. Please for the love of G-d do not call it a QDRO. It's wrong...just wrong.

Super-jurisdiction

- ▶ Is there Residence for “non-military purposes;” or
 - ▶ Consent?
-
- ▶ Put the necessary information in the Decree
 - ▶ Include 10-10 language
 - ▶ Include SCRA language
 - ▶ Include Rank and Longevity language
 - ▶ Include relevant dates including Date of Marriage

Commandment 5 Cont - Pension Basics

- ▶ Put sufficient language in Decree. Don't rely on 3rd party expert to fix.
- ▶ Award Dollars or Percent or Formula
- ▶ Award "Disposable Pay" only - Know this term of art!
 - ▶ Gross minus
 - ▶ SBP premiums that cover the wife (If this spouse not covered, then not deducted)
 - ▶ **VA Waiver (See below)**
 - ▶ Military Debts
- ▶ Consider Interim Payments Language (Gross not net)
- ▶ Consider Reimbursement/Compensatory Maintenance – Howell v. Kaufman. So give it a try.

Submitting Your Application

- ▶ Use Certified Mail (Fax available)
 - ▶ (DFAS should not be trusted)
- ▶ Certified copy of Decree on front of the page. (Spokane does it weird)
- ▶ Proof of marriage if not in decree. (Put in Decree or MQO)
- ▶ DD-2293 Former Spouse Application for Payments
- ▶ DD- 2656-10 Former Spouse's Deemed Election for SBP

Commandment #6 - Thou shalt address the SBP

- ▶ **When the military member dies, the pension dies.** To assure that the spouse is protected for Spouse's life, Spouse must be awarded the **Survivor Benefit Plan (SBP)** or life insurance.
- ▶ Federal law requires the Decree (or MQO) to **specifically** state that spouse is the SBP Beneficiary
- ▶ **Critical Deadlines -1 year** from Divorce (not Separation). **Former Spouse** should make the "DEEMED ELECTION" at time of Decree.
- ▶ If orig. decree silent, can SOMETIMES amend...If original decree included award...Spouse out of luck.

Commandment #7

Thou shalt remember the TSP- Thrift Savings Plan

- ▶ More important after 2018 (Blended Retirement Plan)
- ▶ Divided with a Retirement Benefits Court Order (RBCO) (Again, not a QDRO. TSP is not an ERISA covered plan.)
- ▶ Consider Tax implications –
 - ▶ TSP contributions during deployment grow tax free.
 - ▶ There are now 2 TSP options: Roth and Traditional.
- ▶ Compare with a traditional IRA) – Typically 4-5% higher yield.

Commandment #8

Keep Military “Medical Reetirement” in the back of your mind.

→ EWW! **BASICALLY, GUTS THE DIVISIBLE PENSION.**

-FIRST GOAL IS TO IDENTIFY ISSUE

USE MY CONSULTATION QUESTIONNAIRE.

BOTH SIDES NEED TO ANSWER

ALWAYS GET DD-214 UPON DISCHARGE

THERE IS A CODE ON **LINE 23**

- DISTINGUISH TITLE 38 (VA BENEFITS) FROM TITLE 61 MILITARY (MEDICAL DISABILITY) RETIREMENTS.

-PLEASE CONSIDER AN EXPERT

Commandment #9

Thou shalt consider ALL possible benefits.

- ▶ **Consider Legal Separation**
- ▶ Health Insurance. Is the spouse entitled to health ins?
 - ▶ 20-20-20. Must meet all three criteria
 - ▶ 20-20-15. Must meet all three criteria
 - ▶ Domestic violence
- ▶ Should Post 9/11 GI Bill benefits be shared with spouse or saved for children?
- ▶ Should SGLI life insurance be designated for benefit of children?
- ▶ Mandatory Death Gratuity designation
- ▶ Commissary & Base Privileges (40% avg less \$\$\$)

Commandment #10

Thou shall not forget unique parenting issues

- ▶ RCW 26.09.260, 50 USC, and RCW 38.42
- ▶ Can/should courts consider Deployment or TDY time?
 - ▶ Not on modification. So, get it right at initial phase
- ▶ Discretionary Delegation of Parenting Time
- ▶ Long-distance parenting
- ▶ Domestic violence issues
- ▶ Pending legislation before Congress
- ▶ ID Cards - Age 10? No
- ▶ TriCare – Sponsor is seldom custodial parent

Compare - RCW 26.09.260 (11)

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

- a) Any temporary custody order for the child during the parent's absence shall provide notice to the temporary end no later than ten days after the returning parent custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

Compare - RCW 26.09.260 (12)

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW [26.09.191](#). The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

50 USC 3938 – Amendment to SCRA

§ 528. Child custody protection

Duration of temporary custody order based on certain deployments

If a court renders a temporary order for custodial responsibility for a child based solely on a deployment or anticipated deployment of a parent who is a servicemember, the court shall require that the temporary order **shall expire not later than the period justified by the deployment** of the servicemember.

Limitation on consideration of member's deployment in determination of child's best interest

If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, **no court may consider the absence of the servicemember by reason of deployment, or the possibility of deployment, as the sole factor in determining the best interest of the child**

No Federal jurisdiction or right of action or removal

Nothing in this section shall create a Federal right of action or otherwise give rise to Federal jurisdiction or create a right of removal

Long Distance Parenting Plans

- ▶ Types of Contact – Summer, Spring, Winter,
- ▶ Location of Parents – Stateside or Intl
- ▶ Accompanied Travel and Unaccompanied Travel
 - ▶ Cost of Travel
- ▶ Relocation of military families. (i.e. PCS)
 - ▶ Relocation factors – Education, crime, language, ease of travel
- ▶ ID Cards for Kids (Under age 10 vs. over age 10)
- ▶ EFMP Program – Exceptional Family Member Program
- ▶ Base Daycare?
- ▶ Travel to Hague Convention countries
- ▶ Travel to NON-Hague Convention Countries. 
- ▶ Space “A” risks and benefits

Marriage of Howell

137 S.Ct. 1400 (2017)

COURT CHARACTERIZED DECISION AS ATTORNEY EFFORTS TO CIRCUMVENT THE USFSPA WITH AGREED "INDEMNIFICATION" LANGUAGE.

ACTUAL FACTS: A COURT ORDERED POST-DECREE "MODIFICATION" OF DECREE

- VA DISABILITY WAIVER VIOLATES THE MANSELL DECISION THAT VETERAN'S ADMINISTRATION BENEFITS ARE NON-DIVISIBLE. MANSELL 490 U.S. 581 (1989)



LITIGATION IN A POST-HOWELL WORLD

Howell continued...

- “NEITHER CAN THE STATE AVOID MANSELL BY DESCRIBING THE FAMILY COURT ORDER AS AN ORDER REQUIRING THE SERVICEMEMBER TO ‘REIMBURSE’ OR TO ‘INDEMNIFY’ WIFE, RATHER THAN AS ORDER DIVIDING PROPERTY, A SEMANTIC DIFFERENCE & NOTHING MORE.”
- WE RECOGNIZE, AS WE RECOGNIZED IN MANSELL, THE HARDSHIP THAT CONGRESSIONAL PRE-EMPTION CAN SOMETIMES WORK ON DIVORCING SPOUSES...
- A FAMILY COURT...REMAINS FREE TO TAKE ACCOUNT OF THE CONTINGENCY THAT SOME RETIREMENT MIGHT BE WAIVED, OR TAKE ACCOUNT OF REDUCTIONS IN VALUE WHEN IT CALCULATES OR RECALCULATES THE NEED FOR SPOUSAL SUPPORT.



RESPONSE TO HOWELL ?

HOW DO WE HATE THEE ??
LET US COUNT THE WAYS!!!



The Courts

Search for “loopholes...”

1. WHAT IF WE AGREE? BINDING SETTLEMENT, CR2A
2. LATCHES, RES JUDICATE, ETC
3. MAINTENANCE?
4. DISPROPORTIONATE SETTLEMENT

Schiffman v Rightmeyer (2020)

MEMBER HAS 26 YRS SERVICE. TRIAL COURT APPLIED BULICEK FORMULA (X/Y X .5. X \$\$). MEMBER MEDICALLY RETIRED THE FOLLOWING YEAR. RESULT IS NO "DIVISIBLE" RETIREMENT. MEMBER IS ALSO 100% VA DISABLED. WIFE BRINGS CR60(B)(6) – NO LONGER "EQUITABLE." REVISION DENIED. HUSBAND SHOULDN'T RECEIVE A "WINDFALL." NOT "FAIR AND EQUITABLE."

"I THINK THAT THE HOWELL DECISION GIVES THE STATE COURTS THE ABILITY TO DO WHAT THEY NEED TO DO."

COA II - TRIAL COURT MISINTERPRETED HOWELL V HOWELL. (BUT...)

LESSONS –

- BEWARE THE TITLE 61 "MILITARY MEDICAL DISABILITY RETIREMENT"
- UNDERSTAND WHAT "DISPOSABLE INCOME" IS 10 USC 1408
- COUNSEL FOR SPOUSE – ASK FOR MAINT., DISPROPORTIONATE DISTRIB.

Thielhorn v Thielhorn (2020) –

Div I

- 24-YEAR MARRIAGE. COA AFFIRMS TRIAL CT ORDER THAT RETIRED MEMBER MUST PAY \$1620/MO MAINTENANCE FOR LIFE BASED ON INCOME THAT INCLUDED MEMBER'S VA DISABILITY.
- TRIAL COURT PROPERLY CONSIDERED RCW 26.09.090(1). "THE ONLY LIMITATION ON AMOUNT AND DURATION OF MAINTENANCE UNDER RCW 26.09.090 IS THAT, IN LIGHT OF THE RELEVANT FACTORS, THE AWARD MUST BE "JUST." MATTHEWS 70 WN.APP. 116 (1993).
- WIFE "APPLIED FOR 240 JOBS," SO NO ABUSE OF DISCRETION.
- MAINTENANCE DOES NOT "DIVIDE" VA DISABILITY CITING PERKINS (PERKINS REJECTED "DOLLAR FOR DOLLAR" REIMBURSEMENT, BUT LATER OK'ED MAINTENANCE CONSIDERING VA AS A "FACTOR.")

LESSONS:

ATTORNEY FOR SPOUSE – AVOID "DOLLAR FOR DOLLAR" AWARDS THAT LOOK LIKE MAINTENANCE. IN THIS CASE, "CLOSE" IS PERFECT.

Daniels v. Daniels (2020) Div II

- PARTIES AGREE TO DIVIDE MEMBER'S MILITARY PENSION AND CONTEMPLATED PAYMENT REGARDLESS OF "CHARACTER" OF RETIREMENT BENEFIT. ORIGINAL ORDER NOT APPEALED!
- MEMBER LATER DEEMED PERMANENTLY DISABLED PER TITLE 61 "MILITARY MEDICAL DISABILITY RETIREMENT." DFAS STOPS PAYING.
- HUSBAND MOVES TO "ENFORCE." COURT ENTERS ORDER REQUIRING MEMBER TO PAY HER EX-HUSBAND WHAT HE PREVIOUSLY RECEIVED.
- COURT FINDS THAT VALID, UN-APPEALED, FINAL JUDGMENTS ON THE MERITS ARE BARRED BY *RES JUDICATA AND COLLATERAL ESTOPPEL* FROM BEING CHALLENGED. CITES *MANSELL (FTN #5)*; *KRAFT*; *PERKINS (ON REMAND)*, AND *WEISER* (LATER REVERSED BY *KAUFMAN RE: COLLESTOP*)

LESSONS:

- MEMBER ATTORNEYS - DON'T AGREE TO PAY VA \$\$ WHEN YOU DON'T HAVE TO. DON'T LET IT BECOME "FINAL AND UN-APPEALED."
- SPOUSE ATTORNEY – GET 'EM TO AGREE TO A CR2A & BE NICE FOR 30.

Weiser v Weiser (2020) – Reversed in part by Kaufman

MOTION TO ENFORCE AGREED PROPERTY DIVISION THAT AWARDED SPOUSE AN INTEREST IN MILITARY PENSION THAT WOULD NOT BE REDUCED IN EVENT OF VA DISABILITY WAIVER. (ALT REQ. CR60(B)(11))

REJECT CHALLENGES TO COURT'S ENFORCEMENT OF SETTLEMENT, DENY CR60, AND REMAND TO ADDRESS SBP (SURVIVOR BENEFIT PLAN).

LESSONS:

DON'T FORGET THE SBP & DO THE APPLICATION YOURSELF TO AVOID MALPRACTICE. #DD-2656-10.

Tupper v. Tupper (2020)

Kaufman v. Kaufman (2021) –
Affm'd & cited thru U.S.

Williams v. Williams (2022)

Bryan v. Bryan (2022)

Boatsman v Duncan (2023)

Parish v. Parish (2023)

More...

PORTER V. PORTER (2023) – REVERSED

PARHAM V PARHAM (2024) -

SMITH V SMITH (2024) – DON'T BE A JERK.

**TOWNLEY V TOWNLEY (2024) – REVERSES
TRIAL CT**

KATANI V KATANI (2024)

HELM V HELM (2024)

**PORTER V PORTER (2024) – STATUS OF
BULICEK?**



2025 Active Duty Pay

Effective April 1, 2025. Reflects full 14.5% pay raise for E-1 to E-4.

Commissioned Officers

	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40		
O-10												\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	
O-9												\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	
O-8	\$13,380.00	\$13,818.90	\$14,109.30	\$14,190.30	\$14,553.60	\$15,159.30	\$15,300.60	\$15,876.30	\$16,042.20	\$16,538.10	\$17,256.00	\$17,917.20	\$18,359.10	\$18,359.10	\$18,359.10	\$18,359.10	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20	\$18,808.20
O-7	\$11,117.70	\$11,634.00	\$11,873.10	\$12,063.60	\$12,407.10	\$12,747.30	\$13,140.00	\$13,531.50	\$13,925.10	\$15,159.30	\$16,202.10	\$16,202.10	\$16,202.10	\$16,202.10	\$16,202.10	\$16,285.50	\$16,285.50	\$16,611.00	\$16,611.00	\$16,611.00	\$16,611.00	\$16,611.00	\$16,611.00	\$16,611.00
O-6	\$8,430.90	\$9,261.90	\$9,870.00	\$9,870.00	\$9,907.80	\$10,332.30	\$10,388.70	\$10,388.70	\$10,979.10	\$12,022.80	\$12,635.40	\$13,247.70	\$13,596.30	\$13,949.10	\$14,632.80	\$14,632.80	\$14,925.00	\$14,925.00	\$14,925.00	\$14,925.00	\$14,925.00	\$14,925.00	\$14,925.00	\$14,925.00
O-5	\$7,028.40	\$7,917.30	\$8,465.40	\$8,568.60	\$8,910.90	\$9,114.90	\$9,564.90	\$9,895.80	\$10,322.70	\$10,974.30	\$11,285.10	\$11,592.30	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90	\$11,940.90
O-4	\$6,064.20	\$7,019.70	\$7,488.90	\$7,592.40	\$8,027.10	\$8,493.60	\$9,075.00	\$9,526.20	\$9,840.60	\$10,020.90	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00	\$10,125.00
O-3	\$5,331.60	\$6,044.10	\$6,522.60	\$7,112.40	\$7,453.80	\$7,827.90	\$8,069.10	\$8,466.60	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50	\$8,674.50
O-2	\$4,806.80	\$5,246.70	\$6,042.90	\$6,247.20	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30	\$6,375.30
O-1	\$3,998.40	\$4,161.90	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30	\$5,031.30

Commissioned Officers With Over 4 Years Enlisted Service

	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40	
O-3E				\$7,112.40	\$7,453.80	\$7,827.90	\$8,069.10	\$8,466.60	\$8,802.60	\$8,995.20	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70
O-2E				\$6,247.20	\$6,375.30	\$6,578.10	\$6,920.70	\$7,185.90	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00	\$7,383.00
O-1E				\$5,031.30	\$5,372.40	\$5,571.30	\$5,774.40	\$5,973.60	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20	\$6,247.20

Warrant Officers

	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40	
W-5												\$9,797.40	\$10,294.50	\$10,665.00	\$11,074.20	\$11,074.20	\$11,628.90	\$11,628.90	\$12,209.40	\$12,209.40	\$12,821.10	\$12,821.10	\$12,821.10
W-4	\$5,510.40	\$5,926.80	\$6,096.90	\$6,264.30	\$6,552.90	\$6,838.20	\$7,127.10	\$7,560.90	\$7,941.90	\$8,304.30	\$8,601.60	\$8,891.10	\$9,315.60	\$9,664.80	\$10,062.90	\$10,062.90	\$10,263.60	\$10,263.60	\$10,263.60	\$10,263.60	\$10,263.60	\$10,263.60	\$10,263.60
W-3	\$5,032.20	\$5,241.30	\$5,457.00	\$5,526.90	\$5,752.20	\$6,195.60	\$6,657.60	\$6,875.10	\$7,126.80	\$7,385.40	\$7,851.90	\$8,166.30	\$8,354.40	\$8,554.50	\$8,827.20	\$8,827.20	\$8,827.20	\$8,827.20	\$8,827.20	\$8,827.20	\$8,827.20	\$8,827.20	\$8,827.20
W-2	\$4,452.60	\$4,873.80	\$5,003.10	\$5,092.50	\$5,380.80	\$5,829.60	\$6,052.50	\$6,271.20	\$6,539.10	\$6,748.50	\$6,937.80	\$7,164.60	\$7,313.70	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90	\$7,431.90
W-1	\$3,908.10	\$4,329.30	\$4,442.10	\$4,681.20	\$4,963.50	\$5,379.90	\$5,574.30	\$5,847.00	\$6,114.30	\$6,324.60	\$6,518.40	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60	\$6,753.60

Enlisted Members

	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
E-9							\$6,657.30	\$6,807.90	\$6,997.80	\$7,221.60	\$7,447.80	\$7,808.40	\$8,114.70	\$8,436.00	\$8,928.60	\$8,928.60	\$9,374.10	\$9,374.10	\$9,843.30	\$9,843.30	\$10,336.50	\$10,336.50
E-8						\$5,449.50	\$5,690.70	\$5,839.80	\$6,018.60	\$6,212.10	\$6,561.90	\$6,739.20	\$7,040.70	\$7,207.80	\$7,619.40	\$7,619.40	\$7,772.10	\$7,772.10	\$7,772.10	\$7,772.10	\$7,772.10	\$7,772.10
E-7	\$3,788.10	\$4,134.30	\$4,293.00	\$4,502.10	\$4,666.50	\$4,947.60	\$5,106.30	\$5,387.10	\$5,621.40	\$5,781.30	\$5,951.10	\$6,017.10	\$6,238.20	\$6,356.70	\$6,808.80	\$6,808.80	\$6,808.80	\$6,808.80	\$6,808.80	\$6,808.80	\$6,808.80	\$6,808.80
E-6	\$3,276.60	\$3,606.00	\$3,765.00	\$3,919.80	\$4,080.60	\$4,443.90	\$4,585.20	\$4,858.80	\$4,942.50	\$5,003.40	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80	\$5,074.80
E-5	\$3,220.50	\$3,466.50	\$3,637.50	\$3,802.20	\$3,959.40	\$4,142.40	\$4,234.50	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70	\$4,259.70
E-4	\$3,027.30	\$3,182.10	\$3,354.90	\$3,524.70	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60	\$3,675.60
E-3	\$2,733.00	\$2,904.60	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00	\$3,081.00
E-2	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20	\$2,599.20
E-1	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00	\$2,319.00
E1 <4mos	\$2,144.10																					

Updated March 18, 2025

**MILITARY/FERS
PENSION
QUESTIONNAIRE**

	SERVICE MEMBER	SPOUSE
FULL LEGAL NAME		
DATE OF BIRTH		
SSN #		
ADDRESS		
TELEPHONE NUMBER		
EMAIL ADDRESS		
DATE OF MARRIAGE		
DATE OF MARITAL SEPARATION		
BRANCH(es) OF SERVICE	_____ _____	_____ _____
ALL DATE(S) OF ENLISTMENT	_____ _____	_____ _____
TYPE OF SERVICE Active Duty / AGR National Guard/Reserves Dual Status Tech		
RANK Present Rank Rank at Separation Rank at Retirement	_____ _____ _____	_____ _____ _____
ALL BREAKS IN SERVICE, IF ANY		

DATE OF FINAL MILITARY SEPARATION OR RETIREMENT (IF APPLIC) OR DATE OF ANTICIPATED RETIREMENT		
IS MEMBER A GREY AREA RETIREE (GUARD/RESERVES)		
TYPE (i.e. 20 YR, TERA, MEDICAL, etc) & AMOUNT OF PENSION.ANNUITY, IF KNOWN	Type _____ Amt _____	Type _____ Amt _____
RECENT DEPLOYMENT TO COMBAT ZONE?		
DOES MEMBER HAVE AN INJURY OR DISABILITY? NATURE OF DISABILITY (Combat, PTSD, TBI)		
IS MEMBER RECEIVING V.A. DISABILITY, Amount of benefit, if known? What is the Member's Rating (%)		
DID/ THE MEMBER RECEIVE A "MEDICAL RETIREMENT" FROM THE MILITARY (NOT THE VA)		
WILL THE MEMBER RECEIVE A "MEDICAL RETIREMENT" FROM THE MILITARY (NOT THE VA)? OR IS THE MEMBER ELIGIBLE FOR A "MEDICAL RETIREMENT?"		
WILL MAINTENANCE OR CHILD SUPPORT BE COLLECTED FROM THE RETIREMENT? (NOTE 50% CAP)		

HAS AN SBP BEEN ELECTED (AT 20 YRS, OR UPON RETIREMENT)?		
IF YES, IS THERE AN AGREEMENT ON AWARDING AND PAYING FOR THE SBP?		
IS THERE AN SBP COVERING CHILDREN		
IS THERE A TSP (Thrift Savings) Military or Civilian (Both?) Account #'s	_____ _____ _____	_____ _____ _____
TSP BALANCE AT SEPARATION?		
IS THERE A LOAN ON THE S.B.P.?		
IS ANY OF THE TSP NON-TAXABLE (COMBAT ZONE) OR ROTH TSP?		
IS THE MEMBER ALSO EMPLOYED BY THE FEDERAL GOVERNMENT (i.e. D.O.D.) IF SO, START DATE/END DATE, if applicable	_____ _____ _____	_____ _____ _____

MILITARY CASE CHECKLIST

- Use Military Case Intake form.
- Is there State Jurisdiction under RCW 26.09?
- Is there Federal Jx to divide pension?
 - Consent
 - Residence
- Does SCRA apply?
 - State (RCW 38.42)
 - Federal (50 USC 3900)
 - If active duty, cannot default without appointing counsel
- Legal Separation vs Dissolution – Continued medical care & Maintenance avoidance
- Will Service be on Base or in foreign country
 - If, on base, investigate options for asking base to serve
 - If international, is there an American who can serve on base
 - If international, service rules of host country apply
- Determine which pension plan applies (Final Pay, High-3, or Blended, TERA) and type of service (Active duty or Reserves/Natl Guard).
- Conduct effective Discovery
 - L.E.S (Pay stubs) for 36 months. (Know how to read the fine print)
Retiree Statement (if retired)
 - DD-214
 - VA Disability stmt if maintenance or child support are at issue
 - VA “medical rating report,” if work or parenting are at issue

- TSP quarterly statements (2-3 years)
- Base DV Orders, Records from Family Advocacy
- Base Orders – Hx of deployment or TDY
- Death Gratuity Form
- G.I. Bill eligibility form
- Verification of DEERS enrollment
- Additional Discovery for Reservist/National Guardsmen
 - RC-SBP beneficiary designation at 20 yrs
 - Military service Point Stmt.
 - Point Statement:
 - Form NGB23A (Not B) for Army National Guard
 - DA 5016 at www.hrc.army.mil for Army Reserves;
 - CRCR for Marine Reserves,
 - AF 526 for Air Guard/Air Force Reserves.
 - ARPR/ASOSH for Navy Reserves
- Confirm if Retirement is Military or Medical or Combination
- TSP
 - Were any loans taken on TSP? Did spouse consent per law?
 - Have any distributions been taken out? Did spouse consent per law?
 - An RBDO is needed if the will be divided?
 - Calculate community/separate shares of TSP for division
- Hire expert? Will an expert be needed at Trial. Consider for drafting
- Appoint counsel for default
 - Watch for impact on "Consent or Residence"
- Run Pension Calculations

- 10-year rule for direct payments by DFAS
- Community vs Separation shares of pension
- Determine if spouse is qualified for 20-20-20 or 20-20-15 benefits
- Run 36-month pre-filing average income (DFAS should now calculate upon request)
- Discuss cash-out vs income stream
- Consider VA waivers (for 10-40% rating)
 - Howell
 - Kraft
- Confirm if Retirement is Military Retirement or Medical Retirement (not VA) or Combination
- Address the SBP or RC-SBP (this is a major risk of malpractice)

PARENTING ISSUES

- Child support and 26.19.050
- Consider deployment provisions
- Is Family Advocacy or Base Command involved
 - Have Orders been issued
- TriCare and DEERS
 - EFMP
 - ID cards
- RCW 26.09.260(11,12) limits. Court cannot consider military service for purposes of Modification.
 - Federal SCRA limitations to modification. (50 USC 3900)
 - Pending Uniform laws ???

UNDERSTANDING YOUR DJMS 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							
ENTITLEMENTS				DEDUCTIONS				ALLOTMENTS				SUMMARY							
TYPE		AMOUNT		TYPE		AMOUNT		TYPE		AMOUNT		+ AMT FWD							
A B C D E F G H I J K L M N O													+ TOT ENT						
													- TOT DED						
													- TOT ALMT						
													= NET AMT						
													- CR FWD						
													= EOM PAY						
	TOTAL																		
	LEAVE	HF BAL	BRND	USED	CR BAL	ETS BAL	LV LOST	LV PAID	USEL-OSE	FED TAXES		WAGE PERIOD	WAGE YTD	M/S	EX	ADD'L TAX	TAX YTD		
	FICA TAXES	WAGE PERIOD		SOC WAGE YTD		SOC TAX YTD		MED WAGE YTD		MED TAX YTD		STATE TAXES		ST	WAGE PERIOD	WAGE YTD	M/S	EX	TAX YTD
	PAY DATA	BAQ TYPE		BAQ DEPN		VHA ZIP	RANT AMT		SHARE	STAT	JFTR	DEPNS	2D JFTR	BAS TYPE		CHARITY YTD		TPC	PACIDN
	REMARKS YTD ENTITLE _____ YTD DEDUCT _____																		

DFAS Form 702, May 92

Defense Finance and Accounting Service
Cleveland Center
Code FFS
October 1997

Your pay is your responsibility. This publication is intended to be used as a guide to aid you in understanding the DJMS Leave and Earnings Statement (LES) DFAS Form 702. Every month you will receive an LES showing entitlements, deductions and allotments. Besides obvious format differences, there are also differences in the content of the LES. The Sea Service Counter will now be displayed in the remarks portion of the LES and the Other Pay Date (OPED) is no longer present on the LES. The LES will now be one page in length.

Verify and keep your LES each month. If your pay varies significantly and you don't understand why, or if you have any questions after reading this publication, consult with your disbursing office.

Fields 1 - 9 contain the identification portion of the LES.

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
	1	2	3	4	5	6	7	8	9

- Field 1 **NAME.** The member's name in last, first, middle initial format.
- Field 2 **SOC. SEC. NO.** The member's Social Security Number.
- Field 3 **GRADE.** The member's current pay grade.
- Field 4 **PAY DATE.** The date the member entered active duty for pay purposes in YYMMDD format. This is synonymous with the Pay Entry Base Date (PEBD).
- Field 5 **YRS SVC.** In two digits, the actual years of creditable service.
- Field 6 **ETS.** The Expiration Term of Service in YYMMDD format. This is synonymous with the Expiration of Active Obligated Service (EAOS).
- Field 7 **BRANCH.** The branch of service, i.e., Navy.
- Field 8 **ADSN/DSSN.** The Disbursing Station Symbol Number used to identify each disbursing office.
- Field 9 **PERIOD COVERED.** This is the period covered by the individual LES. Normally it will be for one calendar month. If this is a separation LES, the separation date will appear in this field.

Fields 10 through 22 contain the entitlements, deductions, allotments, their respective totals and a mathematical summary portion.

ENTITLEMENTS		DEDUCTIONS		ALLOTMENTS		SUMMARY							
	TYPE	AMOUNT	TYPE	AMOUNT	TYPE	AMOUNT							
A B C D E F G H I J K L M N O	10		11		12		+ AMT FWD	13					
							+ TOT ENT	14					
							- TOT DED	15					
							- TOT ALMT	16					
							= NET AMT	17					
							- CR FWD	18					
							= EOM PAY	19					
							TOTAL	20		21		22	

- Field 10 **ENTITLEMENTS.** In columnar style the names of the entitlements and allowances being paid. Space is allocated for fifteen entitlements and/or allowances. If more than fifteen are present the overflow will be printed in the

- remarks block. Any retroactive entitlements and/or allowances will be added to like entitlements and/or allowances.
- Field 11 **DEDUCTIONS.** The description of the deductions are listed in columnar style. This includes items such as taxes, SGLI, Mid-month pay and dependent dental plan. Space is allocated for fifteen deductions. If more than fifteen are present the overflow will be printed in the remarks block. Any retroactive deductions will be added to like deductions.
- Field 12 **ALLOTMENTS.** In columnar style the type of the actual allotments being deducted. This includes discretionary and nondiscretionary allotments for savings and/or checking accounts, insurance, bonds, etc. Space is allocated for fifteen allotments. If a member has more than one of the same type of allotment, the only differentiation may be that of the dollar amount.
- Field 13 **+AMT FWD.** The amount of all unpaid pay and allowances due from the prior LES.
- Field 14 **+ TOT ENT.** The figure from Field 20 that is the total of all entitlements and/or allowances listed.
- Field 15 **- TOT DED.** The figure from Field 21 that is the total of all deductions.
- Field 16 **- TOT ALMT.** The figure from Field 22 that is the total of all allotments.
- Field 17 **= NET AMT.** The dollar value of all unpaid pay and allowances, plus total entitlements and/or allowances, minus deductions and allotments due on the current LES.
- Field 18 **- CR FWD.** The dollar value of all unpaid pay and allowances due to reflect on the next LES as the +AMT FWD.
- Field 19 **= EOM PAY.** The actual amount of the payment to be paid to the member on payday.
- Fields 20 - 22 **TOTAL.** The total amounts for the entitlements and/or allowances, deductions and allotments respectively.

Fields 23 through 30 contain leave information.

LEAVE	BF BAL	ERND	USED	CR BAL	ETS BAL	LV LOST	LV PAID	USELOSE
	23	24	25	26	27	28	29	30

- Field 23 **BF BAL.** The brought forward leave balance. Balance may be at the beginning of the fiscal year, or when active duty began, or the day after the member was paid Lump Sum Leave (LSL).
- Field 24 **ERND.** The cumulative amount of leave earned in the current fiscal year or current term of enlistment if the member reenlisted/extended since the beginning of the fiscal year. Normally increases by 2.5 days each month.
- Field 25 **USED.** The cumulative amount of leave used in the current fiscal year or current term of enlistment if member reenlisted/extended since the beginning of the fiscal year.
- Field 26 **CR BAL.** The current leave balance as of the end of the period covered by the LES.
- Field 27 **ETS BAL.** The projected leave balance to the member's Expiration Term of Service (ETS).
- Field 28 **LV LOST.** The number of days of leave that has been lost.
- Field 29 **LV PAID.** The number of days of leave paid to date.

Field 30 **USE/LOSE.** The projected number of days of leave that will be lost if not taken in the current fiscal year on a monthly basis. The number of days of leave in this block will decrease with any leave usage.

Fields 31 through 36 contain Federal Tax withholding information.

FED TAXES	WAGE PERIOD	WAGE YTD	M/S	EX	ADD'L TAX	TAX YTD
	31	32	33	34	35	36

- Field 31 **WAGE PERIOD.** The amount of money earned this LES period that is subject to Federal Income Tax Withholding (FITW).
- Field 32 **WAGE YTD.** The money earned year-to-date that is subject to FITW.
- Field 33 **M/S.** The marital status used to compute the FITW.
- Field 34 **EX.** The number of exemptions used to compute the FITW.
- Field 35 **ADD'L TAX.** The member specified additional dollar amount to be withheld in addition to the amount computed by the Marital Status and Exemptions.
- Field 36 **TAX YTD.** The cumulative total of FITW withheld throughout the calendar year.

Fields 37 through 41 contain Federal Insurance Contributions Act (FICA) information.

FICA TAXES	WAGE PERIOD	SOC WAGE YTD	SOC TAX YTD	MED WAGE YTD	MED TAX YTD
	37	38	39	40	41

- Field 37 **WAGE PERIOD.** The amount of money earned this LES period that is subject to FICA.
- Field 38 **SOC WAGE YTD.** The wages earned year-to-date that are subject to FICA.
- Field 39 **SOC TAX YTD.** Cumulative total of FICA withheld throughout the calendar year.
- Field 40 **MED WAGE YTD.** The wages earned year-to-date that are subject to Medicare.
- Field 41 **MED TAX YTD.** Cumulative total of Medicare taxes paid year-to-date.

Fields 42 through 47 contain State Tax information.

STATE TAXES	ST	WAGE PERIOD	WAGE YTD	M/S	EX	TAX YTD
	42	43	44	45	46	47

- Field 42 **ST.** The two digit postal abbreviation for the state the member elected.
- Field 43 **WAGE PERIOD.** The amount of money earned this LES period that is subject to State Income Tax Withholding (SITW).
- Field 44 **WAGE YTD.** The money earned year-to-date that is subject to SITW.
- Field 45 **M/S.** The marital status used to compute the SITW.
- Field 46 **EX.** The number of exemptions used to compute the SITW.
- Field 47 **TAX YTD.** The cumulative total of SITW withheld throughout the calendar year.

Fields 48 through 60 contain additional Pay Data.

PAY DATA	BAQ TYPE	BAQ DEPN	VHA ZIP	RENT AMT	SHARE	STAT	JFTR	DEPN	2D JFTR	BAS TYPE	CHARITY YTD	TPC	PACIDN
	48	49	50	51	52	53	54	55	56	57	58	59	60

- Field 48 **BAQ TYPE.** The type of Basic Allowance for Quarters being paid.
- Field 49 **BAQ DEPN.** A code that indicates the type of dependent.
 I - Member married to member/own right
 R - Own right
 A - Spouse
 C - Child
 W - Member married to member, child under 21
 G - Grandfathered
 D - Parent
 K - Ward of the court
 L - Parents in Law
 S - Student (age 21-22)
 T - Handicapped child over age 21
- Field 50 **VHA ZIP.** The zip code used in the computation of Variable Housing Allowance (VHA) if entitlement exists.
- Field 51 **RENT AMT.** The amount of rent paid for housing if applicable.
- Field 52 **SHARE.** The number of people with which the member shares housing costs.
- Field 53 **STAT.** The VHA status; i.e., accompanied or unaccompanied.
- Field 54 **JFTR.** The Joint Federal Travel Regulation (JFTR) code based on the location of the member for Cost of Living Allowance (COLA) purposes.
- Field 55 **DEPN.** The number of dependents the member has for VHA purposes.
- Field 56 **2D JFTR.** The JFTR code based on the location of the member's dependents for COLA purposes.
- Field 57 **BAS TYPE.** An alpha code that indicates the type of Basic Allowance for Subsistence (BAS) the member is receiving, if applicable. This field will be blank for officers.
 B - Separate Rations
 C - TDY/PCS/Proceed Time
 H - Rations-in-kind not available
 K - Rations under emergency conditions
- Field 58 **CHARITY YTD.** The cumulative amount of charitable contributions for the calendar year.
- Field 59 **TPC.** This field is not used by the Navy.
- Field 60 **PACIDN.** The activity Unit Identification Code (UIC).

REMARKS	YTD ENTITLE _____	YTD DEDUCT _____
61	62	63

- Field 61 **REMARKS.** Notices of starts, stops and changes to a member's pay items as well as general notices from varying levels of command may appear.
- Field 62 **YTD ENTITLE.** The cumulative total of all entitlements for the calendar year.
- Field 63 **YTD DEDUCT.** The cumulative total of all deductions for the calendar year.

Military Caselaw – Review

Historical Overview

McCarty v McCarty 453 U.S 210, 232-36, 101 S.Ct 2728, 69 L. Ed. 2d 589 (1981).

Holding. In *McCarty*, the United States Supreme Court held that federal law precludes a state court from dividing military retired pay pursuant to state community property laws in a marital dissolution proceeding without an *express grant of authority* from Congress.

Caselaw between McCarty and the USFSPA. In the two years between *McCarty* and the *U.S.F.S.P.A.*, there were several cases that still have relevance. Washington courts held that although the military pension benefits could not be divided, they could be considered as an economic circumstance of the parties in determining an equitable division of property. See *In re Marriage of Dessauer*, 97 Wn.2d 831, 838, 650 P.2d 1099 (1982). It was also held that *McCarty* could not be applied retroactively to modify pre-*McCarty* decrees that divided military retired pay as property and had not been appealed *In re Marriage of Brown*, 98 Wn.2d 46, 51-52, 653 P.2d 602 (1982).

Congress pushes back – USFSPA. In a remarkable demonstration of speed, Congress passed the Uniformed Services Former Spouses Protection Act (U.S.F.S.P.A.) in 1983 which expressly authorized state courts to divide military pensions (albeit with limits) and until the changes of 2016-2018 the 1983 act was largely unchanged.

Practice Evolves Following 2016-18 Changes.: Three major changes occurred between 2016 and 2018. In 2016, Congress passed the NDAA 2016 (*The Defense Authorization Act of 2017*) which altered the definition of “disposable income” in pension divisions, adopting a frozen

coverture model. In 2017, SCOTUS issued its ruling in *Howell v Howell*. The following year, the new Blended Retirement went into effect.

Mansell v. Mansell, 90 U.S. 581, 109 S.Ct. 2023, 104 L.Ed. 2d 675 (1989) –

Holding - Veteran’s Administration Disability cannot be divided.

Statutory Structure. Veteran’s Administration (V.A.) Disability is a monetary benefit payable under Title 38 U.S.C. At the time of *Mansell*, a disabled veteran could not receive both VA disability and Military retirement. The Veteran must “waive” retirement benefits to receive disability benefits.¹ The problem with “waivers” is that they can injure former spouses. If the Court uses the *Bullicek* formula ($X/Y \times .5 \times \$\$ = \text{Spouse’s interest}$), the spouse’s percentage is based on the post-waiver reduced amount rather than the higher pre-waiver entitlement, resulting in an unanticipated reduction in the property award. *Marriage of Bullicek*, 800 P.2d 394, 59 Wn.App. 630 (Wash.App. Div. 1 1990).²

A further unexpected result is that the “waived” money is replaced with non-divisible VA benefits. In essence, the member shifts income from the spouse to him/herself. The lower

¹ This rule was partially reversed in 2003. Congress passed two laws allowed veterans to collect both regular 20-yr Retirement *and* VA disability if the Member has a 50% rating or higher (CRDP) or is combat injured (CRSC) can now collect. But for Members who have a 40% or lower rating the issue persists.

² **Example of how VA Waiver works-** If a retiree's disposable retired pay is \$2000.00 per month, and the order assigns 50 percent to the former spouse, the former spouse will be *entitled* to receive \$1,000 00 per month if the retiree is not disabled. But if the retiree has a 50 percent disability rating, the retiree can waive up to \$1,000 of disposable retired pay in exchange for disability benefits. The retiree's monthly income will then increase from \$1,000 to \$1,500 per month, consisting of \$1,000 in disability benefits and \$500 in disposable retired pay (50 percent of the remaining portion of retired pay) The former spouse's share of retired pay will decrease from \$1,000 to \$500, because the court cannot award the spouse any of the retiree's disability benefits. (Again, some of the harshness of this rule was mitigated in 2003 with passage of concurrent receipt laws, which allow collection of both VA benefits and the military pension in certain circumstances, including a disability rating of 50% or greater.)

Mansell Court attempted to divide the VA waiver so that the wife wasn't injured. However, the U.S. Supreme Court held that under 10 U.S.C. §1408(a)(4)(B), amounts "waived" by the retiree to receive disability benefits are excluded from the definition of "disposable retired pay" and are therefore included in the limited grant of authority in the Uniform Services Former Spouse's Protection Act (U.S.F.S.P.A. 10 U.S.C. 1408). The result is that a retired servicemember who is or becomes disabled can waive the member's retirement benefits dollar-for-dollar to receive disability benefits, thereby reducing substantially the payments made to the former spouse with no detriment to him/herself.

Member loses on Remand. But Mansell's "infamous" Footnote #5, the Court left a door open for the courts to exercise its goal to create property divisions that are "fair and equitable." Nearly as important as the SCOTUS ruling, is the fact that on remand back to California, the Court clarified its intent and the Member lost. The Member took the case back up to the SCOTUS in Mansell II and the Member lost. SCOTUS declined to reverse the California Court's property division.

Rose v. Rose, 481 U.S. 619 (1987)

Holding. Mansell's prohibition against dividing or attacking V.A. Disability does not apply to Child Support.

In *Marriage of Rose*, the Supreme Court answered the question whether Veterans' Disability payments could be garnished for purposes of child support and maintenance/alimony. Veterans' Disability law precludes virtually every other type of debt/obligation either via the spendthrift provision or non-divisibility provisions. However, in *Rose* the Court indicated that the support of children and spouses was as important a policy as the care of veterans.

“Title 38 U.S.C. § 3107(a)(2), which gives the VA discretionary authority to apportion disability compensation on behalf of a veteran's children, ‘is not an exclusive grant of authority to the VA to order that child support be paid from disability benefits, and does not indicate that exercise of the VA's discretion could yield independent child support determinations in conflict with existing state court orders. Moreover, the implementing regulations, which simply authorize apportionment if the veteran is not reasonably discharging his or her [child support] responsibility . . . ,’ contain few guidelines for apportionment, and no specific procedures for bringing claims.

Furthermore, to construe § 3107(a)(2) as preemptive could open for reconsideration a vast number of existing divorce decrees affecting disabled veterans, and lead in future cases to piecemeal litigation before the state courts and the VA.

Given the traditional authority of state courts over child support, their unparalleled familiarity with local economic factors affecting the issue, and their experience in applying state statutes that contain detailed support guidelines and procedures, it seems certain that Congress would have been more explicit had it meant the VA's apportionment power to displace state court authority. Pp. 626-628.

Thus, disability can be garnished through a procedure called “apportionment.” 42 U.S.C. 659, 5 C.F.R. Part 581. Although, it is noteworthy that the Court’s stated preference for giving strong deference to State Family Law Orders seems to contradict its rulings in *McCarty* and *Mansell*. However, the court was balancing policies, not wanting to impoverish dependents (children and former spouses). Further, when the SCOTUS cases are reviewed on remand, the State regularly finds a way to craft a settlement that is fair and equitable.

Marriage of Howell, 137 S.Ct. 1400 (2017)
Member wins, but loses on remand

Holding: Post- decree Motion by Spouse to enforce Decree and order to reimbursement of VA Disability that Member “waived” violates the *Mansell* decision holding that Veteran’s Administration benefits are non-divisible. *Mansell, 490 U.S. 581 (1989)*. *Marriage of Howell* 137 S.Ct. 1400 (2017) limited the Court’s/Attorney’s (clever ?) efforts to offset the former’s spouses loss of retirement when the member “waived” pension benefits in order to receive non-taxable Veteran’s Administration (VA) benefits.

Neither can the state avoid Mansell by describing the family court order as an order requiring the servicemember to 'reimburse' or to 'indemnify' wife, rather than as Order dividing property, a semantic difference & nothing more."

We recognize, as we recognized in Mansell, the hardship that congressional pre-emption can sometimes work on divorcing spouses...

A family court...remains free to take account of the contingency that some retirement might be waived, or take account of reductions in value when it calculates or recalculates the need for spousal support.

And yet, on Remand to the Arizona Courts, the Member LOST on remand. These materials will illustrate that while the Appellate Courts may give to the Member with one hand, the Trial courts have regularly taken it away with the other hand: Mansell, Howell.

POST 2017 RESPONSE TO HOWELL ? TWO LINES OF CASES...

As demonstrated by the progeny of Howell, the response by the Trial Courts has, like Mansell, been tepid at best, hostile at worst.

Passive Aggressive. One line of cases dutifully cites Mansell and Howell and vacates the Decree or order and remands to the trial court, who inevitably do what they want.

Dismissive. The second line of cases has developed a series of doctrines to entirely circumvent Mansell and Howell, ironically using SCOTUS' own words (in the infamous Mansell Footnote #5) against them

Result. The result has been a flurry of litigation, inconsistent decisions, creative jurisprudence, and an a field day for practitioners who enjoy making arcane (or brilliant) arguments.

Lawyers for the Member argue:

Pre-emption,
Voidable orders,

Void orders,
Lack of subject matter jurisdiction,

Latches,
Howell is Retroactive
Motion to vacate (fraud, equity, etc)

Procedural defect,
Abuse of Discretion

Lawyers for the Spouse argue:

Agreement/Contract,
Res judicata and finality
Collateral estoppel
Howell Not Retroactive,
Disproportionate distribution
Abuse of discretion
Motion to vacate (fraud, equity, etc)

Finality
Latches
Equitable estoppel
Maintenance
Procedural error,
Just plain old equity (i.e. You're a jerk).

Yet, no matter how skilled the equitable or legal arguments, the net result has been that while courts cannot “divide” (whatever *that* means after reading the opinions), the court can, and will, do its utmost to follow its “prime directive” to craft a “fair and equitable” property division. One spouse will not get a windfall from the other, particularly after a long-term marriage. Moreover, there have been a LOT of fees imposed against the Member that may discourage challenges to final Orders.

Schiffman v Rightmeyer (Apr 2020)
Spouse loses

Holding: COA II - Trial Court misinterpreted Howell v Howell. Spouse loses.

The Parties were married for 15 years. The Member had 26 yrs of military service. Trial Court applied *Bulicek* formula ($X/Y \times .5 \times \$\$$). The following year, the Member “medically retired.” (See discussion below.) As a result, there was NO “divisible” retirement whatsoever. Member was also 100% VA disabled. Wife brought CR60(b)(6). The Commissioner said the Decree is no longer “equitable.” On Revision, the Trial Ct said that the “Husband shouldn’t receive a “windfall,”” adding that it was not “fair and equitable.” The judge added some odd dicta that “I think that the *Howell* decision gives the State Courts the ability to do what they need to do.”

On appeal, the court reversed the Order Vacating the Decree, finding that the Decree was unambiguous (Wife was only awarded her interest from disposable pay. She was never intended to get disability.

Lessons –

- Beware the Title 61 “military medical disability retirement”
- Know what “disposable income” is per 10 USC 1408 (2017)
- Counsel for Spouse – ask for maintenance or disproportionate distrib.

Thielhorn v Thielhorn, No. 81843-1-I (Nov 2020)
Spouse wins

Holding. Trial court's award of maintenance to Spouse, was not a de facto division of Member's V.A. disability. Division I affirms the trial court's order that retired Member must pay \$1620/mo maintenance for life, even if "based" on income that included Member's V.A. disability. Trial Court properly considered RCW 26.09.090(1).

"The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be "just." Matthews 70 Wn.App. 116 (1993).

The trial court did not abuse its discretion when it rejected Member's claim that Spouse was able to work. The Court of Appeals notes that Spouse had "applied for 240 jobs," which was evidence of Spouse's "need." The Court cited *Marriage of Perkins* for the proposition that maintenance does not "divide" VA Disability. (Note the *Perkins* court had rejected a "dollar for dollar" reimbursement of retirement that the Member had waived, but on remand, (and another appeal) approved the trial court considering V.A. as a "factor" in calculating maintenance

Lessons:

Attorney for spouse should be careful to avoid "dollar for dollar" awards that look like division or award of VA disability. In this case, "close" was "perfect."

Weiser v Weiser 14 Wn.App.2d 884 (Oct 2020)
Spouse wins/Member loses.

Holding. On Settlement is binding per *Res Judicata* & Estoppel. (My opinion – This case demonstrated amazing lawyering and outstanding analysis by the Court.)

Facts. The parties were married for 18 years (1992-2010). In 2010, the parties entered into an “agreed” Decree awarding Spouse a share of the pension and stating that Spouse’s award of military pension,

“Would not be reduced in event of VA disability waiver...the wife shall receive benefits at a level that is no less than the amount of monthly retirement she is entitled to receive under the terms of this order.”

The Agreement also stated that *“Husband shall elect the survivor benefit plan for his military retirement and name the wife as beneficiary.”*

Later in 2010, Member retired after 20 yrs of military service. Member was deemed 30% disabled per the VA, requiring a “waiver” of retired pay to receive the tax-free VA dollars (i.e. no concurrent receipt). For 5 yrs the Member abides by settlement...sort of (Member under-paid \$21,000).

In 2017, the Supreme Court handed down the Howell case and the Member unilaterally reduced Spouse’s payments.

Spouse moved to “enforce” Settlement arguing on a Contract argument. Member argued that *Howell* ended compensatory maintenance. (Of note - No CR60 by Member). Spouse also moved to enforce the order requiring Member to designate spouse as the Beneficiary to the SBP (Survivor Beneficiary Plan).

Trial Courts. Commissioner ruled that Member must follow settlement *“clear and unambiguous agreement”... and Fees*. Judge declined to revise, finding that the settlement was binding... awarding more Fees. The judge made extensive findings that the original order (a)

indicated an “*unambiguous & clear agreement to reimburse,*” (b) anticipated disability and “waiver,” (c) history of prior non-compliance, current non-compliance, (d) *the “decree does not require the military to take any action in violation of Federal Law.”* (Um, good luck getting DFAS to do that), and (e) that the court should not go beyond the four-corners of the Orders (i.e. Parol evidence). More fees were also awarded. Member appealed.

On Appeal. In finding that the Decree was binding under *res judicata*, the court articulated a detailed and thorough analysis of military pension division law from McCarty through Howell.

The court rejected Member’s various arguments. First, the USFSPA and Howell did not bar the court from forcing Member to abide by his unambiguous, un-appealed agreement under doctrine of *res judicata*. The court similarly rejected Member’s interpretation of the agreement that the parties anticipated disability waiver and, presumably that he shouldn’t have to reimburse Spouse (despite clear language to the contrary). Member also claimed that the agreed 3-years of maintenance precluded any further maintenance (again, despite clear language to the contrary). The court also noted that Member hadn’t sought to vacate or modify the decree.

In particular, the Court applied relied on the now infamous footnote #5 in Mansell that the decision to “open” a decree is a “state matter,” noting that the Mansell court merely set aside the lower court ruling and remanding for further proceedings. On remand, the Weiser court that the California Mansell court found that they had *not* opened the decree and, therefore, Mrs Mansell was entitled to *Res Judicata* of her decree. The Weiser court further noted that the Mansells dispute went all the way back up to the SCOTUS in Mansell II where the SCOTUS

declined this time to set aside California's order. Member lost. This case is later affirmed & cited by Kaufman

The SBP. The issue of the SBP was remanded. Unfortunately, the SBP was dead issue here. (10 USC 1448)] The SBP election must be elected at retirement. Once waived, it cannot later be elected. It is not good practice to order the Member to make the election o.b.o the former spouse. See Lammers v. Rumsfeld, 345 Fed.Supp..2d 604.

Fees. The court imposed fees...again.

Lessons:

- (1) If you need to write a brief, start here.
- (2) The court will do its utmost to follow goal of "fair and equitable."
- (3) Court will enforce Pre-Howell agreements
- (4) Read footnotes and military cases on remand.
- (5) Don't rely on the Member to pay. Use DFAS if possible.
- (6) Apply for the SBP yourself (DD-2656-10). See Lammers v. Rumsfeld, 345 Fed.Supp..2d 604.

Here SBP was dead issue here. (10 USC 1448)] because election was not made at retirement.

- (7) Advise your client that fees are a tool used by displeased courts to discourage a party wanting to undo an agreed order.

- (8) If you need to write a brief, start here.

R. Daniels (aka Bonds) v. N. Daniels, No 53224-7-II (Dec 2020)

Spouse wins.

Holding – The court rejected the Member’s pre-emption argument per Howell. The Court also rejected her CR60(b)(4) “fraud,” CR60(b)(6) equity, and CR60(b)(11) catch-all claims. The valid, agreed, final, and un-appealed judgments are barred by *res judicata*, *finality*, and *collateral estoppel* from being challenged. *Cites Mansell (fn #5); Kraft; Perkins (on remand), and Weiser.*

Facts. The parties married in 1992 and separated in 2006 (14 yrs). The parties entered into a CR2A in 2007 that was finalized in 2008. The settlement agreement awarded the Spouse a share of the community investment accounts “regardless of character” of the retirement benefit, “*the goal being an end result that each party receives one-half of the present value of the marital portion.*” The military pension was not divided (And, therefore, held as tenants-in-common). The Member didn’t comply with the division of community accounts, owing Spouse \$146,191.

In 2012, the Spouse moved to enforce the account division set forth in the 2007 settlement. The Court ordered the Member to pay Spouse monthly equalization payments from her military retirement for a fixed period (20 ½ yrs) because she no longer had enough money to pay him from her share of the investment accounts. The parties agreed the Member’s payments to Spouse would “come from Bond’s military retirement,” but lacked specific details. This agreed order (1st Addendum) was not appealed.

In 2014, the parties again jointly moved to divide the military pension and clarify the actual amounts of the investment account equalization payments. The parties entered into a 2nd addendum to their original, un-appealed agreement. This Order, too, was NOT appealed!

In 2016, Member later deemed permanently disabled (70%) per Title 61 “military medical disability retirement.” Although DFAS initially made payments to the Spouse, the bureaucracy eventually caught up and DFAS stopped paying the Spouse.

Procedural History. The Spouse both moved to (a) “enforce” or “clarify” the 1st and 2nd agreed Addenda, or (b) vacate the division. The member argued that the recent *Howell* decision “prohibited state courts from ordering a servicemember, who received disability, from indemnifying the former spouse for loss of income due to receipt of disability benefits. The Spouse responded that if Howell applied, the Court should vacate the decree and enter a whole new property division. The Member responded with her own CR60 to vacate all three agreements. The court rejected both Motions to Vacate and ordered the Member to make the agreed payments. Member appealed.

Lessons:

- (1) Don't agree to pay VA \$\$ when you don't have to.
- (2) Don't let it become “final and un-appealed.”
- (3) Spouses - Get 'em to agree to a CR2A & be nice for 30 days.

Marriage of Tupper (Dec 2020)

Member wins, but loses on remand. Compare with Weiser & Kaufman.

Holding. “A court may ‘consider’ that a party will receive social security; however the benefits themselves are not divisible.” Cited Rockwell, Howell, Zahm to illustrate how court can “consider” benefits, but then found Order was VOID. Court rejects the latches, res judicata, and estoppel arguments with fairly illogical reasoning (Reversed in nearly record time by the same court in Kaufman). Same court - 180° from Weiser. But...Remedy is to VACATE the whole estate. Reverse and remanded to reconsider the entire property division.

Facts. A 2006 Divorce decree incorporates a mediated agreement to “award” wife “50% of husband’s social security.” Husband refused. Wife moved to enforce. Facts are Identical to Weiser. The Commissioner ruled that Husband must comply with decree. The Court denied revision rejecting husband’s claim of pre-emption & lack of subject matter jurisdiction.

Appeal. Division II reverses the Commissioner and trial court.

Marriage of Kaufman No. 53366-9-II (Apr 2021)
Spouse wins. Cited favorably in several states in response to Mansell/Howell.

Holding. The court follows Weiser, instead of Tupper, finding that Tupper is dangerous to finality and predictability of state law in a myriad of areas. The court rejects the Member's "void" urging the Court to follow Tupper. Court also rejects claim that it lacks Subject matter jurisdiction. A "valid, final, un-appealed order is (a) not void, (b) is enforceable under res judicata, (c) Member is collaterally estopped from challenging the order he himself also relied on, and (d) Ironically, "dollar for dollar" is OK (despite Perkins which said, "NO"). Court also construes language "VA waiver/disability" as conjunctive not disjunctive. The result is that Member's maintenance obligation = ½ of military retirement + ½ of all VA. The court notes that Member isn't required to pay his maintenance "from his VA" (despite being retired, although he could pay from the remaining half of his Retirement). Court awards more Fees to Spouse.

Facts. Parties married 22 yrs. In 2007, Parties separate. 2008 - parties agreed to P.S.A. that is incorp. into decree: (a) Equal division of community property, including military retirement, (b) "permanent non-modifiable maintenance" equal to 50% of Member's VA disability "waiver." The court found the settlement fair & equitable and entered a Decree adopting the agreement. The agreed Order was not appealed.

In 2008, the Member retires and is awarded a 40% VA disability rating that requires a waiver of military benefits in exchange for non-taxable VA benefits. Member is not eligible for concurrent receipt.

In 2018, Member's rating increases to 60% triggering "concurrent receipt." Member increased Retirement payments to Spouse, but stopped paying "waiver/VA" maintenance. Spouse moves to enforce pmt of both benefits

Trial Court. The trial Court enforced the agreement, awarding back payments. Court also awarded fees. The Member appeals claiming that the permanent, non-modifiable maintenance violates Federal Law & void & no res judicate because Decree void from inception.

Lessons:

- (1) Draft carefully: “VA waiver/disability.” The court chose to interpret this language as conjunctive not disjunctive. Be absolutely clear of intent what *exactly is to be paid*.
- (2) Be clear that if Member agrees to “waiver” compensation, decree language is clear there is language that reimbursement ends if concurrent receipt is triggered (ending waiver and spouse’s injury.)

Marriage of Williams No. 55708-8-II (Mar 2022)
Spouse wins

Holding. Member cannot collaterally challenge the validity of an agreed, un-appealed decree and MQCO. *Res Judicata* applies. Order is not VOID under pre-emption...and a number of sundry arguments that Member failed to meet his burden of proof. More fees to Spouse.

Facts. In 2017, the parties enter into an “agreed” Decree awarding (a) spouse 50% of Member’s “disposable military retirement” w/ reservation of Jurisdiction if Member accepted VA disability that required a “waiver” of military retirement to receive non-taxable VA benefits. This language was incorporated into the MQCO the same day. When Member retired he accepted VA disability in lieu of retirement but did not comply with the terms of the decree and MQCO (presumably in light of *Howell*). Spouse moved to enforce. The Member argued that federal pre-emption deprived the Superior Court of subject matter jurisdiction to enter the original Decree and MQCO. Therefore both orders were void. The Commissioner rejected these arguments and ordered the Member to comply with the Decree/MQCO. The Member moved to revise, to which was also denied.

Twice trial court ordered Member to pay and awarded fees. Neither decision was appealed. Spouse brought 3rd motion for judgment. A special master appointed. Member was found in contempt. Member found in contempt a 2nd time. Member eventually Moves to vacate the Decree and MQCO. This motion is denied; the court cited *Mansell* Ftn 5 – The decision to reopen a final order is a matter of State law that won’t be reversed by the SCOTUS.

Marriage of Bryan – No. 55186-1-II (May 2022)
Spouse wins.

Holding – The Member fails to meet the CR60 analysis. Court did not abuse discretion.

Facts. The parties were married for 29 yrs. In 2018, the Member filed for divorce. In 2019, the parties agreed to a CR2A and a supplemental CR2A. The agreements, where Member received the bulk of the assets, awarded the Spouse 45% of Member’s “disposable retired pay.” The MQCO, however, awarded Spouse 50% of Member’s military pension using a modified Bulicek formula ($X/Y \times .5 \times \$$ as if the Member retired on the date of divorce). There were other drafting errors and confusion about what assets were community property and what assets were separate property. In July 2020, the parties again mutually agreed to an Order correcting the record, but again the record is inconsistent and confusing. In October, the parties are in a contested hearing for the first time. The trial court found that although Member’s arguments are valid, Spouse’s arguments are better because the result is fair & equitable. The Member appealed to Division II. In the meantime, the Member refused to comply with the Court’s ruling and the Spouse moved for a finding of contempt. (Member’s attorney withdrew.) In response, while the appeal was pending, Member moved to either (a) enforce the orders, or (b) vacate the 2020 Orders under CR60(b)(Mistake & Fraud by Counsel). The trial court denied both motions, Member in contempt. Member appeals.

Lessons –

- (1) Make sure it can be argued that the settlement is “fair and equitable.”
- (2) Consider putting pension division language in Decree to avoid ambiguity (but make confidential).
- (3) Don’t be a jerk. Better yet, be likable.
- (4) Don’t engage in contempt while your appeal is pending.

Boatsman v Duncan. No. 56869-1-II (Jul 2023)
Spouse wins. Remanded, in part

Holding. (a) Even if incorrect, the mis-characterization of (or failure to characterize) personal property acquired during marriage in non-community property states is not reversible error as long as the result is “fair and equitable.” (b) “Characterization” is not controlling; There was no abuse of discretion. Remanded issue of personal property division to the trial court to confirm/modify its ruling. (c) Further, the court may award a share of Member’s “separate property” military retirement to Spouse under Marriage of Konzen, 103 Wn.2d 470 (1985). (d) the maintenance award was reasonable under RCW 26.09.090, and therefore was not an abuse of discretion. The maintenance award did not divide Member’s disability or social security, but rather, merely considered all resources per Marriage of Kraft. (e) The court’s money judgment in favor of Spouse for the unpaid arrearage of military pension payments was not properly raised on appeal (and also not an abuse of discretion). (f) Spouse awarded “need-based fees on appeal.

Procedure. The parties were married in 2006 and separated in 2020. During 12 of those years, Member was in the Army (Member served from 1996-2018). The parties did not live in Washington state during their marriage (Tennessee, Virginia, and Arkansas – non community property states) until after the parties had separated. The Member only moved to Washington state after he had a massive stroke and relied on his mother for care. (Wife stayed behind to care for her father who had Alzheimer’s. There was a 1-day “contested trial” in Pacific County in January of 2022 with testimony from a number of individuals.

Spouse testified she was primarily a stay-at-home spouse during the marriage. She asked the court for spousal maintenance, testifying to (a) the ways she advanced the Member’s career, (b) her financial needs, and (c) her desire to obtain an education. Member was largely unable to testify as a result of his stroke, but his mother testified that he received about \$8,300/month (VA,

Social Security, and Military Retirement), \$6,700 of which was disposable income. Subject matter jurisdiction over the marital estate was an issue as was the characterization and value of the Member's numerous firearms. The court made findings that were critical of the Member's significant and unexplained post-separation depletion of quasi-community assets

The trial court either mis-characterized or failed to characterize most of the assets. However, it awarded wife 33% of Member's military pension. The court awarded Spouse maintenance (\$1,000 x 48 mos).

Member appealed.

Lessons

1. If forced to trial, Spouse's attorney should prepare Spouse to testify per RCW 26.09.090 "need and ability."
2. Member's case should focus on equitable issues in addition to federal issues
3. Don't deplete quasi-community property assets.

Marriage of Porter No. 57168-4-II (Aug 2023).
Spouse wins... But see Porter II below.

Holding. The trial court properly clarified the Decree by awarding Spouse a share of husband's post-divorce increase in retirement due to a recall to duty. Member isn't entitled to reimbursement for overpayments under the doctrine of laches. The trial court did not abuse its discretion when it declined to award pre-judgment interest. Neither party is awarded fees... or sanctions as requested by Member.

Facts. Member served in Army from 1976 to 2002. The parties were married from 1977 through 1994. The military paid for Member to go to medical school. In 1994, the parties agreed to division language that was uncertain and had 2 options. When the Member retired, the parties couldn't agree on language, so the trial court awarded wife 30.25% of Member's pension per *Marriage of Bulicek*. An MQCO was entered the included language that included both medical retirement and VA disability language. Wife received payments for about 7 yrs until Member was re-called to active duty. Member served for an additional 3 yrs and then retired a 2nd time. In 2019, after nearly 7 years, Member indicated for the first time that DFAS overpaid Spouse for the increase in pension accrued for Member's post-decree service between 2009 and 2012. Member believed Spouse's share should be reduced from 30.25% to 27.273% (2.97%). Member argued that: (a) The Decree was ambiguous; (b) the Spouse's interest should not be based on rank at 2nd retirement; (c) That the court's order violated *Howell's* prohibition against "indemnification" (even though Howell pertained to VA disability "waiver" not increases in rank). The claim was that wife was indemnified for payments that were not made during the 3 yrs Member returned to the military. (d) The court's order was inequitable (without specifying exactly how). The court rejected each argument, relying on *Marriage of Bishop*, *Marriage of*

Bulicek, and Howell v Howell. The court also noted that the “frozen coverture” formula implemented by NDAA 2016 would have applied if the parties had divorced after 2016.

Marriage of Parham. 57919-7-II (Jan 2024)
Spouse loses.

Holding. It was not an abuse of discretion for the trial court to vacate a prior Order of Default. The Court correctly applied the test for vacating an order under CR60.

Facts. Member petitioned for dissolution. Respondent, who was not a native American and lacked proficiency in English, was unaware of the need to Respond. The Member brought a Motion for Default, which the Court granted. The original default, based on the Member's Petition, awarded the Member the entire military pension. It also didn't take into consideration the Spouse's role of primary parent while Member served in the military. Eleven months later, the Respondent moved to set aside the Decree and Parenting Plan. The court agreed. Member moved to reconsider, which was also denied. The Court applied the 4-prong test. (1) The court found that the Respondent had a valid claim. (2) The Spouse's delay was excusable. (3) The Respondent acted timely upon discovery of the issue. (4) the Member may have suffered a "hardship" but he did not suffer a "substantial hardship"

Lesson-

Don't award yourself 100% of an asset unless you accept the risk of future litigation.

Marriage of Townley No. 39265-1-III (Mar 2024)

Spouse loses. Remanded for further proceedings. Petition for discretionary review by Spouse. Denied 9/3/2024. Court has indicated an intent to award maintenance.

Holding- The Trial Court misapplied the Howell analysis and exceeded its authority by enforcing the provision requiring Member to pay Spouse half of his non-divisible Military Medical Disability Retirement . The matter is remanded to enter a property award in accordance with RCW 26.09.080 and perhaps its own maintenance award in accordance with RCW 26.09.090. In contrast, the award of the SBP will be enforced.

Facts. The parties attended mediation and entered into a signed and notarized settlement dividing the Member’s military pension, including the part that was non-divisible Chapter 61 Military Medical Disability Retirement. Neither party had counsel. Before entry of the final decree, however, the Member learned of the limitation on dividing VA disability per Mansell and Howell (by this author). Member revoked his consent to the settlement. Spouse moved to enforce the settlement under CR2A. The trial court entered an Order enforcing the settlement, including the division of VA disability. The Court also enforced the award of the SBP to the Spouse

Lessons.

1. Recognize when a Member is receiving a Chapter 61 Military Medical Disability Retirement. (Look at the DD-214)
2. Challenge a settlement before it becomes final and timely appeal. (Compare what happened to those who didn’t - Weiser and Kaufman)

Marriage of Smith Nos. 39342-9-III and 39557-0-III (Jun 2024)
Spouse wins.

Holding – The Commissioner’s ruling (adopted in toto by the Trial Judge) was not an abuse of discretion. Fees are awarded to Spouse.

Facts. The parties were married for 31 years. In 2018, the parties mediated and entered into an agreement incident to their Legal Separation. Member would pay \$2,000/month spousal maintenance. The military pension was also divided. The SBP awarded to wife (at such time as the Legal Separation was converted to a Dissolution.) Member filed a Petition to Modify Maintenance in 2021. The Petition was denied. In 2022, the Member filed a 2nd Petition to Modify Maintenance. His financial declaration showed a monthly income of \$11,800. The Spouse moved to dismiss the Petition under CR12(b)(6)(Failure to state a claim) and for summary judgment under CR 56. Member moved to strike the Motion to dismiss. The court granted the Spouse’s Motion for Summary Judgment (omitting to rule on the 12(b)(6)). The Court found that the Member’s expenses were suspect. The Court denied the Member’s motion to dismiss. The trial court denied Revision. Member refused to pay Maintenance. Member’s defense to contempt was to claim that Spouse (a) had the burden of proving Member hadn’t paid and (b) hadn’t filed a Financial Declaration and hadn’t proved her “need” for Maintenance ordered 4 years prior. Member was found in contempt. Member appeals.

Lessons.

1. Spouse should apply for benefits promptly and personally.
2. Don’t be a jerk.

Marriage of Helm No. 57344-0-II (Aug 2024).
Member wins but pyrrhic victory.

Holding. The court did not abuse its discretion in considering Spouse's CR60. But the 2015 [MQCO] was also ambiguous. The 2022 Order also contained a scrivener's error. The Court lacked the authority to "modify" the parties' rights as stated in the 2015 Order (with 2022 Order). The trial court can clarify a Decree, but it cannot "modify" its Decree. Reversed and remanded to calculate Member's "disposable retired pay."

Facts. The Member appealed the Trial Court's entry of MQCO (ID'ed as a 2022 QDRO). The parties married September 2001. The parties divorced 13 years later, in September 2014 (before NDAA 2016). The Decree awarded wife 50% of the marital portion of Member's military pension ("151 months"). In 2015, an "agreed" MQCO was entered that used a variation of a "frozen coverture" formula. The language in the order was awkward. Member retired in 2019. Member objected to DFAS's calculation and they conducted an internal audit. In 2021, after 2 years of payments, DFAS determined that the 2015 Order did not authorized payments to the Spouse. Spouse moved to vacate the MQCO. (No one attempted to "amend" or "modify" the MQCO.) The parties mediated their dispute and entered into a signed CR2A. The next month, Spouse brought a CR60 Motion. The Court entered the "2022 QDRO" stating that "it did not consider Spouse's motion to be brought under CR60, but it had authority to "modify" the Order. Member appealed on the basis that the Court had erred in considering Spouse's CR60 Motion and that the court further erred in modifying the 2015 Court Order by entering the 2022 QDRO. He believed that the Court had miscalculated his "disposable retired pay."

Lessons.

- 1) Know the various ways to calculate the Community or marital interest.
 - a. Bulicek - $151 \text{ mos marital service} / 273 \text{ mos total service} \times .5 \times E7$

- b. NDAA 2016 - 151 mos marital service /211 months service at decree x .5 x
(Pension “as if” Member retired as E7 in 2015 with 15.25 yrs.
- 2) Understand that the NDAA 2016 only applies to decrees finalized after December 31, 2016. Decrees finalized before 12/31/2016 could use the Bulicek formula (not frozen-coverture).
 - 3) Please do not call a Military Pension Division Order a QDRO.
 - 4) Know what is worth fighting for. i.e. \$781/mo vs. \$829/mos = \$577 yr vs. Atty fees at \$400/hr x 100 hrs = \$40,000 /\$577 = 69 yrs to break even.
 - 5) Understand how SBP Premiums work. Congress says “shared premiums and shared risk”

**Marriage of Porter (II) – No. 102355-3 (Aug 2024
Spouse loses. Holding not broad in light of NDAA 2016
(implementing “frozen coverture formula)**

Holding. Washington Supreme Court reverses Division II holding. The “community efforts doctrine” does not extend to an increase in rank or longevity for service performed post-decree, post-retirement, and incident to an involuntary recall to duty. (Citing or qualifying: *Brewer*, *Blood*, *Hurd*, *Borgh*, *Landry*, *Short*, and *Bulicek* (“time-rule method”). The trial court exceeded its authority. The calculation of “disposable retirement income.” The Court also declined to award Spouse reimbursement for “retirement payments” that were not made (2009-2012) during recall to active duty. Because the Member prevailed on appeal, the Court declined to address the Federal pre-emption argument. Reversed and remanded on non-constitutional grounds.

Facts. This case is a matter of first impression. The Court answers the question whether a second period of military service (specifically, an involuntary recall to service, 8 years after retirement and 15 yrs post-decree) should be rolled-into the pre-existing military pension division Order that followed the *Bulicek* formula (X mos marital service / Y mos total service at retirement x .5 x Final Disposable Income).

Lessons.

- 1) The “community efforts doctrine” is the ultimate question in characterizing assets.
- 2) A Decree is “ambiguous” if it does not state at what point in time a pension is to be divided (at “time of initial or first retirement”). *Chavez*.
- 3) Members’ lawyers should argue that promotions or significant increases in service points (2.5%/yr) that occur long after divorce will not/should not be included in Spouse’s

interest. (As the years pass, fewer and fewer cases will be affected by this holding, given NDAA-2016, limiting Spouse's claim to post decree promotions/increase in multiplier.)

- 4) This appeal was probably worth the fight. In rough numbers, Spouse's interest in Member's Lt Col. (with 20 yrs) pension was about \$1,678 whereas her interest in a Colonel's pension (with 23 yrs) was \$2262. A difference of \$7,019/yr (and more as COLAs grow)

ANOTHER TYPE OF MILITARY RETIREMENT
Dividing a Medical Retirement – May not be worth it.

There are at least six (6) sources of income that are derived from military service: (a) Monthly wages, (b) Special pay (i.e. BAH, BAS, Flight pay, Hazard Pay, etc), (c) Regular 20-year Retirement, (d) Thrift Savings Plan Accounts, (e) V.A. Disability through the Veteran's Administration, and (f) Military Medical Disability Retirement (not requiring 20 yrs of service). This section discusses "Military Medical Disability Retirements." As Gulf War veterans age up, their ability to perform the essential tasks of their military jobs is becoming more common and, therefore, military medical disability retirements more common.

"Military Medical Disability Retirements" are sometimes called "Chapter 61 Retirements." This is the U.S. Code chapter governing servicemembers who are no longer able to perform their necessary duties (Chapter 61 of title 10 United States Code). Members who have been determined to be unfit for duty with a disability rated *by the military* (not the VA) of 30% or greater, are eligible for Military Medical Disability Retirement.

Practitioners representing a military Spouse should always ask their client (and the Servicemember) if he/she has any health issue that is, or could, limit his/her ability to do their job. In other words, is the Member eligible for a Military Medical Disability Retirement? This question can literally avoid an unenforceable decree and a malpractice claim. In everyday parlance, the terms "military retirement" and "military medical retirement" are similar (and easily confused). But in application, each Retirement is profoundly different. How?

First, a twenty-year "Military Pension" is divisible, but a "Military Medical Retirement" is **non-divisible per 10 USC 1408**:

U.S.F.S.P.A.

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

*The term “**disposable retired pay**” means the **total monthly retired pay** to which a member is entitled (as determined pursuant to subparagraph (B)(1)³ **less amounts** which –*

*(iii) in case of a member entitled to retired pay under **Chapter 61 of this title (military medical retirement)**, 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 retired (or the date on which the member’s name was placed on the temporary disability retired list);*

Second, there are two disability rating systems (You know...Similar, but different).

One rating system is through the Veteran’s Administration. The other system is the Military disability rating system established under Chapter 61 in 10 USC. (Members are rated by an “M.E.B.” or military “Medical Evaluation Board”). These systems act independently of each other and not bound by the other’s determination. However, a servicemember can have ratings with the Military, the VA, or both (as is typically the case) but only collect one (unlike 20-year retirees).

How a Medical Retirement Work. A member whose condition is not stable may be placed on the temporary disability retired list (TDRL) for up to five years at which point they must be either discharged, retired, or returned to duty. Members whose condition has stabilized at a disability rating of 30% or higher may be placed on the permanent disability retired list (PDRL). In the case of a member on the TDRL, the minimum percentage is 50% while on the

³ (B)(1) For purposes of subparagraph (A), the total monthly retired pay to which a member is entitled shall be—

(i) the amount of basic pay payable to the member for the member’s pay grade and years of service at the time of the court order, as increased by
(ii) each cost-of-living adjustment that occurs under [section 1401a\(b\) of this title](#) between the time of the court order and the time of the member’s retirement using the adjustment provisions under that section applicable to the member upon retirement.

TDRL.

Military Medical Retirement: The member, at his discretion, may choose either:

Option 1 – Partial Retirement

“Retired Pay Base” x “Years of Creditable Service” x .025

Retired Pay Base - The retired pay base for a qualified disability retirement is determined under either the “final pay method” (entered prior to Sept 1980) or the High-36 months method (entered after Sept. 1980).

Years of Creditable Service- The years of creditable service for computation of the retired pay percentage multiplier include all active duty and all credited reserve points divided by 360.

Option 2 – Medical Retirement

The percentage of DOD disability

If the difference between the two is positive, that sum can be divided in the divorce. If the sum is negative, nothing is divisible. And as noted above, this sum is often fairly *de minimus*.

Resources

<https://militarypay.defense.gov/Calculators/Medical-High-3-Calculator/>

<https://vaclaimsinsider.com/military-medical-retirement/#:~:text=Service%20members%20who%20are%20medically,served%20less%20than%2020%20ye>

Examples based on September 2024 pay numbers :

E5 with 17 yrs service, DOD 80% disability rating, All CP, 2 kids

The choice of Partial Retirement or DOD Rated Disability:

Partial Retirement

A. Formula for Military Medical Retirement 17 yrs x .025 multiplier = 42.5% x (High-36) (Avg of preceding 36 months = \$3845.50) = **\$1,634.00 partial retirement**
or

DOD Medical Disability (taxable, unlike VA disability)

A. DOD Determined rating = \$2,885 @ 2024 rates,
B. Divisible portion = \$2885 - \$1,634 = **\$1,250.00**

Each Party’s Income

Member = \$2,260 Medical Retirement (+ whatever VA also received)

Spouse $\$1250 \times .5 = \625

E5 with 10 yrs service, 40% disability rating, All community, 2 kids

The choice of:

Partial Retirement (Years of Service)

C. Formula for Military Medical Retirement 10 yrs x .025 multiplier = 25% x (High-36 Avg of preceding 36 months) = **\$985.00 partial retirement**

Or

DOD Medical Disability (taxable, unlike VA disability)

A. DOD disability at determined 40% = **\$1466 @ 2024 rates**

Divisible portion $\$985 - \$1466 = \$0$

Each Party's Income

Member - \$1466

Spouse - \$0

E5 with 18 yrs service, 40% disability rating, All community, 2 kids

Partial Retirement (Years of Service)

D. Formula for Military Medical Retirement 18 yrs x .025 multiplier = 45% x (High-36 Avg of preceding 36 months) = **\$1803.00 partial retirement**

Or

DOD Medical Disability (taxable, unlike VA disability)

B. DOD disability at determined 40% = **\$1538 @ 2024 rates**

Divisible portion $\$1803 - \$1538 = \$238$

Each Party's Income

Member - \$1684

Spouse - \$119

Conclusion: Typically, the member will usually choose the DOD disability payment option because it is larger. A member typically only chooses the medical retirement when the disability rating (%) is fairly low but the member has substantial time in service (i.e. 10+ yrs).

Per 10 USC 1408, the divisible portion of the medical Retirement is: Medical Retirement less VA disability. If the number is positive, that sum can be divided in the divorce. If the sum is negative, nothing is divisible. And as noted above, this sum is fairly *de minimus*.

Remedy: The Spouse should consider other options like maintenance, disproportionate distribution, etc.

50 U.S. Code § 3938 - Child custody protection

(a) Duration of temporary custody order based on certain deployments

If a [court](#) renders a temporary order for custodial responsibility for a child based solely on a [deployment](#) or anticipated [deployment](#) of a parent who is a [servicemember](#), the [court](#) shall require that the temporary order shall expire not later than the period justified by the [deployment](#) of the [servicemember](#).

(b) Limitation on consideration of member's deployment in determination of child's best interest

If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a [servicemember](#), no [court](#) may consider the absence of the [servicemember](#) by reason of [deployment](#), or the possibility of [deployment](#), as the sole factor in determining the best interest of the child.

(c) No Federal jurisdiction or right of action or removal

Nothing in this section shall create a Federal right of action or otherwise give rise to Federal jurisdiction or create a right of removal.

(d) Preemption

In any case where [State](#) law applicable to a child custody proceeding involving a temporary order as contemplated in this section provides a higher standard of protection to the rights of the parent who is a deploying [servicemember](#) than the rights provided under this section with respect to such temporary order, the appropriate [court](#) shall apply the higher [State](#) standard.

(e) Deployment defined In this section, the term “[deployment](#)” means the movement or mobilization of a [servicemember](#) to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders—

- (1) that are designated as unaccompanied;
- (2) for which [dependent](#) travel is not authorized; or
- (3) that otherwise do not permit the movement of family members to that location.

(Oct. 17, 1940, ch. 888, title II, § 208, as added [Pub. L. 113–291, div. A, title V, § 566\(a\)](#), Dec. 19, 2014, [128 Stat. 3384](#).)