

Cannon & Associates

YOUR FIERCE ADVOCATE



Protecting Military

Benefits and Retirement



Protecting Your Military Retirement in Divorce

Introduction

This guide is intended to educate service members and spouses of service members on the most important interests that are often overlooked in military divorce. Multiple benefits exist in the military for service members and their families that do not exist in a civilian context. Unfortunately, many service members are unaware of all of these benefits or more importantly how to protect the interest.

During divorce or separation former spouses have the right to financial interests and retirement that must be preserved or potentially be lost. Additionally, service members have the potential to protect or forfeit interests that are life altering. This guide is not intended to be a complete guide to military divorce. It is intended to inform you on issues and interests often overlooked by service members and attorneys that are not versed in this area of law.



THE MILITARY'S NEW FROZEN BENEFIT RULE

You can now stop a former spouse from benefiting from your promotion in the military after divorce. However, you cannot stop your spouse's receiving the benefit of your promotions, until you divorce him or her.

The National Defense Authorization Act of 2017 ("NDAA") has seriously reduced the claims available to a service members former spouse in a divorce due to the new Frozen Benefit Rule. Many military divorce attorneys and family lawyers that do not represent service members in divorce are aware of this rule.

However, the rules have changed and a former spouse of a service member cannot benefit from promotions or other benefits to the service member after divorce. The calculation of division of military retirement in an Oklahoma divorce is as follows:

Number of Years of Marriage and Military Service Overlap

Number of years of total service

Prior to the 2017 NDAA, a former spouse was entitled to a portion of the military retirement to the service member for the years of overlapping military service and marriage divided by total years of service; regardless of promotions after divorce. In pre-retirement military divorce cases, the former spouse's benefit would decrease based on continued service, i.e. existing overlap would be divided by increasing number of years of service. number

The 2017 NDAA freezes the denominator (bottom number in calculation) and takes a snapshot of the parties at the time of the divorce decree based on the military member's earnings at that time. The service member's high-three earning years is used to calculate the former spouse's benefit in the divorce. Regardless of the parties agreement in a military divorce in Oklahoma; DFAS will only pay based on the NDAA 2017, which calculates at the date of divorce.

The following example explains both rules by application:

Old Rule: Take the hypothetical retirement and divorce information of the following service member; an E-6 gets divorced after 10 years of service and eight years of marriage. He subsequently retires after 30 years of service as an E-9.

Years of marriage and service eight (8) years; divided by total years of service thirty, which equals 8/30 or 4/15. The remaining fraction is multiplied by .50 for the spousal share and the former spouse received 13% of the military retirement:

$$4/15 \times 50\% = 13\%$$

An E-9's base pay is \$7474.80. The retirement award of 60 percent or .02 x 30 years under the BRS of an E-9 over would equal \$4,484.40. The old rule would dilute the base as the service member had a total of 30 years of service; however, it is increased by using the E-9 pay grade. The math equals out to 13% of \$4,484.40 or \$582.97 per month to the former spouse.

New Frozen Rule: Years of marriage and service eight (8) years is multiplied by 50% spousal share for 40% total. However, under the Frozen Rule the high three earnings of the E-6 is used, not the rank at retirement. Therefore, the High Three income of an E-6 with 10 years of service is \$3656 a month or \$43,872 per year.

The New Blended Retirement System (BRS) only allows for two (2) percent of total retirement to be added per year. Therefore, a service member with ten (10) years of service would receive 20% of their base pay as retirement. The former spouse would only receive 40% of that retirement at the Frozen date:

$\$8,774.00$ (high three earnings) \times 20% = $\$1,754.80$ (Service member's retirement pay)

$\$1,754.80$ (Service member's retirement pay) \times 40% = $\$292.46$ (Former Spouse's share)

Under the new Froze Rule a former spouse in this circumstance **would only receive \$292.46** of the service member's retirement pay; as opposed to the Old Rule, in which the former spouse **would receive \$582.97!**

The system for the Reserves and National Guard is even more complex! Retirement points and other factors must be considered, including the pay charge to determine High Three. This is only a primer to an often-overlooked issue. We would be glad to provide additional guidance at any time.



Survivor Benefits Plan

What is a Survivor Benefit Plan?

The military allows for a lifetime annuity for their dependents upon death. The annuity is a percentage of retirement pay, Survivor Benefit Plan (SBP). Basically, SBP is a military insurance policy to protect a survivor's income from military retirement if the service member passes away before the survivor. There is a premium and a payout made in monthly payments from DFAS. This program is comparable to life insurance in some ways.

Who is Eligible for SBP Benefits?

Military retirement payments stop after a retiree passes away, unless SBP is in place. The only option is to receive monthly payments, which are adjusted for inflation and cost of living. Only one person can receive the SBP; therefore, if a former spouse is designated and a service member dies with a new spouse; only the former spouse would receive the military retirement.

How can I ensure the Proper Payment of Survivor Benefits?

In order to elect a former spouse, a member must send DFAS a properly executed SBP Election Statement, DD 2656-1. The Statement must include the signature of both parties and the following:

1. Whether the order is based on a Court Order; OR
2. Whether the order is based on a voluntary agreement.

SURVIVOR BENEFIT PLAN (SBP) ELECTION STATEMENT FOR FORMER SPOUSE COVERAGE				
<i>(Please read Privacy Act Statement and Instructions on back BEFORE completing form.)</i>				
SECTION I - ELECTION OF COVERAGE - RETIRED MEMBERS ONLY				
RETIRED MEMBERS changing from spouse or spouse and child(ren) coverage to former spouse or former spouse and child(ren) coverage. RETIRING MEMBERS must complete required section of DD Form 2656 to elect coverage for former spouse or former spouse and child(ren).				
1. DUE TO DIVORCE, CHANGE MY SBP COVERAGE TO (X one)		*NOTE: If an election included child(ren), list in Item 10 ONLY the child(ren) resulting from the marriage of the member and the former spouse. Include the date of birth and SSN for each child.		
<input type="checkbox"/> FORMER SPOUSE	<input type="checkbox"/> FORMER SPOUSE AND CHILD(REN)*			
SECTION II - RETIRED AND RETIRING MEMBERS				
2. ARE YOU CURRENTLY MARRIED? (X one)				YES NO
3. IS THIS ELECTION BEING MADE PURSUANT TO THE REQUIREMENTS OF A COURT ORDER? (X one)				
4. IS THIS ELECTION BEING MADE PURSUANT TO A WRITTEN AGREEMENT PREVIOUSLY ENTERED INTO VOLUNTARILY AS PART OF OR INCIDENT TO A PROCEEDING OF DIVORCE, DISSOLUTION OR ANNULMENT? (X one)				
5. IF "YES" TO ITEM 4, WAS SUCH A VOLUNTARY WRITTEN AGREEMENT INCORPORATED IN, RATIFIED, OR APPROVED BY A COURT ORDER? (X one)				
6. DATE OF BIRTH OF FORMER SPOUSE (YYYYMMDD)	7. DATE MARRIED TO FORMER SPOUSE (YYYYMMDD)	8. DATE DIVORCED FROM FORMER SPOUSE (YYYYMMDD)	9. HAS FORMER SPOUSE REMARRIED? (If "YES", give date - YYYYMMDD)	
				<input type="checkbox"/> NO <input type="checkbox"/> YES
10. DEPENDENT CHILDREN (To be completed only by retired members electing former spouse and child(ren) coverage. Continue in Item 11, "Remarks," if necessary.)				
a. NAME (Last, First, Middle Initial)	b. DATE OF BIRTH (YYYYMMDD)	c. SSN	d. RELATIONSHIP (Son, daughter, etc.)	e. DISABLED? (Yes/No)
11. REMARKS				
SECTION III - CERTIFICATIONS - RETIRED AND RETIRING MEMBERS AND FORMER SPOUSES				
12. MEMBER		13. FORMER SPOUSE TO BE COVERED		
a. NAME (Last, First, Middle Initial)	b. SSN	a. NAME (Last, First, Middle Initial)	b. SSN	
c. SIGNATURE		c. SIGNATURE		
d. ADDRESS		d. ADDRESS		
(1) Street (Include apartment number)		(1) Street (Include apartment number)		
(2) City	(3) State	(4) ZIP Code	(2) City	(3) State (4) ZIP Code
14. MEMBER'S WITNESS		15. FORMER SPOUSE'S WITNESS		
a. NAME (Last, First, Middle Initial)		a. NAME (Last, First, Middle Initial)		
b. SIGNATURE	c. DATE SIGNED	b. SIGNATURE	c. DATE SIGNED	
d. ADDRESS		d. ADDRESS		
(1) Street (Include apartment number)		(1) Street (Include apartment number)		
(2) City	(3) State	(4) ZIP Code	(2) City	(3) State (4) ZIP Code

DD FORM 2656-1, APR 2009

PREVIOUS EDITION IS OBSOLETE.

Reset

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Determining a Former Spouse's Eligibility for SBP?

Oklahoma Courts can award SBP to a former spouse in a divorce decree. It is crucial to ensure your SBP interests are protected in the divorce decree or you will not be entitled to this benefit upon the service member's death. Without including details of whether or not the former spouse will receive the SBP, how the benefit will be paid, and how the member is to make his or her SBP election at retirement.

To the benefit of the service member and detriment of the former spouse, if a divorce decree fails to detail Former Spouse Coverage, the retiree has absolute ability to either remove the former spouse from the plan or continue coverage. It is nearly impossible for a former spouse to change the election made at the time of retirement. Therefore, in order to protect your rights as a former spouse, you must ensure the election is made shortly after the divorce. In order to make the election, you may complete SBP Election Statement for Former Spouse Coverage (DD 2656-1).

Other SBP Factors

- A SBP election in a divorce decree is insufficient to be awarded the benefit. The member or the former spouse must inform DFAS of the Court Order within one year of the divorce decree;
- Once the one-year election time limit expires, it is nearly impossible for a former spouse to receive the SBP coverage; however, we have successfully aided client's in recovery their interests;
- Survivor Benefit Plans are not taxable; however, a premium is required until the premium "is paid up". The SBP premium is considered paid after 30 years of SBP premium payments;
- Military retirement calculations that do not meet DFAS requirements are not enforceable;

Conclusion

It is crucial to retain experienced military divorce counsel if you are facing or considering divorce and you or your spouse is a service member. We review decrees on a monthly basis for disgruntled divorced spouses who did not receive any retirement or SBP payment due to poorly crafted decrees. We hope this guide has been helpful in educating you on the most common issues overlooked in military divorce. Contact Cannon & Associates for a free confidential case evaluation if you have additional questions or are facing military divorce. You may email us at john@jpcannonlawfirm.com or call us at (405) 657-2323. Put Fierce Advocates to work on your military divorce.

FIERCE ADVOCATES FOR FAMILIES AND FREEDOM





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