

An Introduction to Family Law and the Military

by Carl O. Graham

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This article addresses the issues unique to family law cases involving military personnel, including jurisdiction, the Servicemembers Civil Relief Act and other statutes protecting servicemembers, the rights of deployed parents, the division of military retirement, VA disability payments, and obtaining family support from a servicemember.

The term “military divorce” is not a legal one; it is a colloquial term referring to a family law proceeding where at least one of the parties is a servicemember¹ or retiree. Military cases may present unique challenges—for example, a party may deploy with little notice. There are state and federal laws intended to protect the rights of servicemembers, in addition to military regulations outlining the support of family members and jurisdictional issues. There also are laws addressing a retirement plan that historically was not divisible by the states and, even now, has unique criteria for division. Military families face parenting challenges with greater frequency than civilians, due to their highly mobile lifestyle.

With six military installations in Colorado,² in addition to numerous reserve component units, it is important for the family law practitioner to understand issues related to servicemembers and the military. This article discusses issues practitioners face when representing servicemembers and their spouses in family law cases, and provides links to resources with more comprehensive information.

Subject Matter Jurisdiction

Typically, jurisdiction is not an issue when both parties live, marry, and have a child or children in Colorado. However, in cases involving two servicemembers, establishing subject matter jurisdiction in Colorado can be challenging.

Colorado Domiciliary

For Colorado to have subject matter jurisdiction to grant a dissolution of marriage, at least one party must have been a Colorado domiciliary for ninety days prior to filing.³ Servicemembers usually designate their states of residence by submitting to their branch of service a DD Form 2058, State of Legal Residence Certificate.⁴ The military then reports that residence to the applicable state and

federal taxing authorities, and reflects that state of residence in the “State Taxes” block of the military Leave & Earnings Statement (the servicemember’s pay stub).

Being stationed in Colorado pursuant to military orders, without more, is not sufficient to establish residence.⁵ Factors relevant to determining whether Colorado is a servicemember’s legal residence include registering to vote in Colorado, registering a vehicle in Colorado, obtaining a Colorado driver’s license, working in a civilian job in Colorado, and the intent to remain in Colorado.⁶ None of these factors alone may be sufficient to overcome the servicemember’s claimed legal residence pursuant to the DD Form 2058, but several of them together may be sufficient.

Practitioners should take caution in relying on vehicle registration to establish residence, due to the Colorado exemption for non-resident servicemembers from paying vehicle ownership tax.⁷ To save hundreds of dollars per year, servicemembers routinely will submit a DR Form 2667, Affidavit of Nonresidence and Military Service Exemption from Specific Ownership Tax⁸ to the Department of Motor Vehicles on registration, wherein they swear, under penalty of perjury, that they are not legal residents of Colorado.

Residence and Parenting Issues

If a dual military couple initiates dissolution proceedings in one of their respective states of legal residence, they likely will face problems with parenting issues. Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA),⁹ a child’s home state is defined as the state the child has resided with a parent or acting parent for at least six consecutive months prior to filing or, for a child under 6 months of age, the state where the child lived from birth.¹⁰ Thus, even though Colorado may have no jurisdiction to grant a dissolution, it may be the child’s home state under the UCCJEA, and therefore have exclusive jurisdiction to make an initial child custody determination.¹¹ This could result in dual legal proceedings, with a dissolution action in one state where



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a spouse was a resident, but an allocation of parental responsibilities proceeding in Colorado, pursuant to CRS § 14-10-123. Often, the military couple's best option is for one of them to submit a new DD Form 2058 to the military, designating Colorado as the state of legal residence, then wait the requisite ninety days before initiating the case.

Jurisdictional questions arise less frequently when only one spouse is in the military and the other is a civilian. Generally, courts will find that a civilian living in Colorado whose spouse is a servicemember is a legal resident of Colorado.

Personal Jurisdiction

C.R.C.P. 4 outlines the requirements for personal service. These requirements apply equally to civilians and servicemembers, and neither state nor federal law contain any additional legal requirements for service of process on military members.

However, the absence of any formal legal restrictions on serving process does not imply it will be easy to serve military personnel. A servicemember may live on a military installation that restricts civilian access, meaning service of process may need to be coordinated with the local or military law enforcement. Service of process on a U.S. servicemember stationed overseas, like a civilian served overseas, may be governed by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.¹² Finally, for all practical purposes, it is impossible to serve a summons on a deployed servicemember, absent a signed waiver of service, or finding someone in the same unit willing to effect service.

Servicemembers Civil Relief Act

In 2003, the U.S. Congress updated the Soldiers' and Sailors' Civil Relief Act of 1940; the new version is the Servicemembers Civil Relief Act of 2003 (SCRA). The SCRA contains numerous legal protections for servicemembers, two of which apply to family law proceedings: (1) protection from default judgments; and (2) stays of civil proceedings.¹³

Protection of Servicemembers Against Default Judgments

In any civil legal proceeding, a party seeking a default judgment is required to file an affidavit stating whether the other party is in the military or whether military status cannot be determined.¹⁴ The court cannot enter a default judgment against the servicemember unless an attorney is appointed to represent him or her.¹⁵

A court shall set aside a default judgment against a servicemember when that judgment was entered during the military service, or within sixty days of the termination of such service, provided that:

- 1) the request is filed during the military service or within ninety days after the service ends;¹⁶
- 2) the military service materially affected the servicemember's ability to appear; and
- 3) the servicemember has a meritorious or legal defense to some or all of the matter.

The most likely scenario for relief would occur when a servicemember was deployed to a combat zone at the time the judgment entered. Simply being stationed overseas rarely will affect a servicemember's ability to participate, given thirty days of paid leave per

year, the availability of telephonic testimony, and modern communications that make it easy to retain counsel from afar.

Stay of Proceedings When Servicemember Has Notice

A court may stay proceedings for at least ninety days on its own motion, and shall do so on application by a servicemember¹⁷ when the following criteria are met:

- 1) the request is filed during the military service or within ninety days after the service ends;
- 2) the applicant has actual notice of the proceeding;
- 3) the application is in writing and includes facts stating how military service materially affects the ability to appear and a date when the servicemember may appear; and
- 4) the application includes a communication from the servicemember's commander that the military duty prevents appearance and leave is not available.

The initial ninety-day stay is mandatory. Thereafter, the servicemember may apply for an additional stay, using the same criteria. The court may deny a subsequent application, however, provided that an attorney is appointed to represent the servicemember.

Parenting Issues

Lack of geographic stability is a fact of life for military personnel and their families. In a 2001 report, the U.S. General Accounting Office found that the average tour length for military personnel was two years.¹⁸ Military families often come to Colorado not because of family roots, but because the servicemember was transferred. As a result, civilian spouses may have little desire to remain in Colorado and would rather return to their home states. Additionally, the servicemember may be ready to move while a case is pending or by the time a permanent orders hearing is held. The effect is a disproportionately high number of cases where a parent seeks to move the children as part of the initial custody determination.¹⁹

Even if this situation can be avoided due to the civilian spouse remaining in Colorado, the servicemember invariably will face a move to a new duty station within a year or two from the dissolution. Unless the other parent is willing to follow the servicemember, that move may necessitate a relocation request under CRS § 14-10-129(2). Because a move pursuant to military orders is a "forced" relocation, no matter the outcome, the children will be geographically separated from one of their parents.

Overseas deployments are a fact of life for military personnel. The Army's standard deployment length presently is fifteen months,²⁰ and soldiers stationed in Colorado can expect to deploy at least once in a three-year cycle. Air Force personnel face shorter deployments, and can expect to deploy for 120 days per twenty-month cycle.²¹ These, and other frequent absences from home, affect a servicemember's ability to parent.

Recent Developments

Three recent legal developments are aimed at protecting servicemembers from losing parental rights due to deployments. The first is the pending federal legislation that would expressly include parenting hearings under the protection of the SCRA, discussed above.

The second is the 2007 Colorado Court of Appeals decision, *In re Marriage of DePalma*,²² which involved an Air Force reservist

with equal parenting time scheduled to deploy to Iraq. Father wanted his wife (the children's stepmother) to exercise his parenting time during his absence, notwithstanding the existence of a right of first refusal in favor of mother if he was unavailable to exercise parenting time. The trial court approved the determination that the children should spend his parenting time with their stepmother while father was deployed, but gave mother the day-to-day decision-making authority.

The Court of Appeals affirmed, setting aside the right of first refusal to hold that, because a fit parent is presumed to act in the best interests of the children, that parent also can delegate his or her parenting time. Because the *DePalma* holding potentially allows deployed servicemembers to delegate their parenting time to a third party, practitioners can expect questions from both servicemembers and their former spouses as to what this might mean in a particular situation.²³

On April 7, 2008, Governor Bill Ritter signed H.B. 08-1176, which protects parents who are members of the National Guard or Reserves from facing permanent changes in parenting due to being called up for active duty. The bill is limited to reserve component servicemembers, and does not apply to full-time active duty personnel.

The bill creates a new statute, CRS § 14-10-131.3, which provides that a modification of parenting time due solely to a reservist's deployment or active federal service can be only interim. When the reservist returns from the deployment, the *status quo ante* springs back into effect, and the parenting orders that existed prior to the active duty are reinstated without the need for a fur-

ther court order. Furthermore, if a servicemember consents to the other parent raising the children during the active duty service, that will not constitute consent to the children being integrated into the other parent's household for the purposes of modifying the primary residential parent.

H.B. 08-1176 also modified the Uniform Child Custody Jurisdiction and Enforcement Act by adding CRS § 14-13-102(7)(b), which states:

[H]ome state does not mean a state in which a child lived with a parent or a person acting as a parent on a temporary basis as the result of an interim order entered pursuant to section 14-10-131.3.

Military Retirement Division

Military personnel who serve for a minimum of twenty years are entitled to receive a defined benefit pension for life, with payments depending on years of service and the servicemember's base pay at the time of retirement.²⁴ An optional Thrift Savings Plan also is available.²⁵

For example, a lieutenant colonel retiring with twenty-five years of service receives retirement pay of \$4,769 per month, which is 62.5 percent of the base pay of \$7,631.10. Retirement payments previously were capped at 75 percent of base pay; however, effective 2007, servicemembers who retire with more than thirty years of service will receive more than 75 percent of their base pay. Annual cost of living adjustments are awarded based on the consumer price index.

In 1981, the U.S. Supreme Court ruled that federal law prohibited states from dividing military retirements during dissolution proceedings.²⁶ Congress reacted by enacting the Uniformed Services Former Spouses Protection Act (USFSPA) in September 1982.²⁷ The USFSPA provides that state courts may divide a servicemember's disposable retired pay²⁸ on dissolution, but does not require them to do so, nor does it create a specific formula for division. The USFSPA further authorizes the Defense Finance and Accounting Service (DFAS) to make direct payments of no more than 50 percent of the servicemember's disposable retired pay to former spouses, provided there were at least ten years of marriage overlapping the military service (the 10/10 rule).²⁹

The USFSPA has very specific jurisdictional requirements to divide a servicemember's military retirement.³⁰ The servicemember must reside in the state not due to military orders, claim the state as his or her state of legal residence, or consent to the jurisdiction of the court. Because the USFSPA preempts state law, even with personal service on a servicemember inside the state, Colorado lacks subject matter jurisdiction to divide retirement, absent domicile or affirmative conduct by a servicemember that demonstrates express or implied consent to jurisdiction.³¹

Colorado Division of Military Retirement

In its 1988 *Gallo* decision,³² the Colorado Supreme Court held that military retirements were marital property, subject to division on dissolution of marriage. This was followed in 1995 by the *Hunt* decision,³³ which set out the various methods of division. The most common of these is the coverture fraction formula, also known as the *Hunt* formula, under which the marital share of the retirement is as follows: months of marriage overlapping military service³⁴ divided by total months of creditable military service at time of retirement.

If the servicemember is still on active duty at the time of dissolution, the trial court can divide the retirement immediately, based on a calculation of its net present value,³⁵ or reserve jurisdiction to divide the retirement until the servicemember actually retires and the formula can be calculated. The latter option is more common.

To receive direct payment from DFAS, a qualified domestic relations order is not used. Instead, the order dividing the retirement should contain the following:³⁶

- 1) an indication that the servicemember's rights under SCRA were respected;
- 2) an indication of the basis of jurisdiction over the servicemember (residence, domicile, or consent);
- 3) the date of marriage and an indication that the 10/10 rule is met; and
- 4) the percentage (or, less common, the dollar amount) awarded to the former spouse.

A well-drafted order also should address contingencies, such as indemnity for any future reductions and survivor benefit coverage.³⁷ Certified copies of the order/agreement dividing the retirement and the decree of dissolution and a completed DD Form 2293, Application for Former Spouse Payments from Retired Pay, should be sent to DFAS.³⁸

Survivor Benefit Plan

On retirement, a servicemember may participate in the Survivor Benefit Plan (SBP). In return for a monthly premium, the plan

provides payments to the surviving spouse in the event of the retiree's death. The maximum coverage available is 55 percent of the designated base amount, which is a minimum of \$300 per month and a maximum of the servicemember's retired pay. Spousal consent or a court order is required for a married servicemember to opt for less than the maximum coverage at the time of retirement.³⁹

For example, a retired lieutenant colonel with monthly retired pay of \$4,769 will have that amount as the maximum designated base amount. In the event of the servicemember's death, the surviving spouse will receive \$2,623 per month, or 55 percent of that amount. The likely maximum a former spouse would receive from the retirement in a dissolution proceeding is 50 percent, or \$2,385 per month.

The premium for SBP coverage is 6.5 percent of the designated base amount per month. Thus, for the maximum coverage, the retired lieutenant colonel will pay \$310 per month. If the maximum designated base amount is selected, SBP also is considered fully paid after 360 months of premium payments.

Courts have discretion to allocate the SBP premium between spouses,⁴⁰ and often order the spouses to equally split the premium. However, because the premium is deducted by DFAS prior to the retirement being divided, absent any reimbursement mechanism, the spouses would pay the premium in accordance with their relative shares of the military retirement.

SBP may not be the best option to protect the military retirement. For example, a former spouse who is planning on remarrying while under the age of 55 will lose SBP eligibility during the remarriage, and can be protected only through life insurance.

If SBP is not elected at the time of retirement, it is waived and cannot be obtained later, even if ordered by a court.⁴¹ Additionally if "spouse" coverage is selected, unless the servicemember changes it to "former spouse" coverage, the former spouse will not be protected by SBP.

If a servicemember is divorced at the time of retirement, the statute requiring spousal consent to elect less than maximum coverage is inapplicable. If the servicemember elects no SBP coverage, it may be correctable only after a cumbersome process involving submitting a form⁴² to the appropriate Board for the Correction of Military Records. The former spouse may, within one year of the order requiring SBP coverage, effect a deemed election by sending DFAS a letter that includes: (1) a certified copy of the order requiring coverage; (2) the servicemember's name, Social Security number, and status (active or retired); and (3) the former spouse's name, Social Security number, date of birth, and address. A prudent attorney representing a former spouse always should do a deemed election shortly after the dissolution.⁴³

VA Disability Payments

On or after retirement,⁴⁴ servicemembers may be eligible to receive disability payments from the U.S. Department of Veterans Affairs (VA), which often result in a waiver of some retired pay. The fact that a servicemember may receive VA disability payments is not intended as a reflection on his or her ability to work; more than one-third of the 1.8 million military retirees living in 2005 were receiving VA disability payments.⁴⁵

Retirees who have a disability rating of less than 50 percent are required to waive military retirement, dollar-for-dollar, in return for receiving VA disability payments. Those with a rating of 50

percent or higher waive a decreasing portion of their retirement until the phase-out period is completed in January 2014.

A complete discussion of how VA disability payments are calculated is beyond the scope of this article,⁴⁶ but such payments are independent of rank and depend on the disability rating and number of dependents. For example, in 2008, a married servicemember with one child and a 70 percent disability rating received \$1,332 in monthly disability payments.

The U.S. Supreme Court has ruled that states are prohibited from dividing disability payments,⁴⁷ and Colorado has followed suit.⁴⁸ This rule still is in effect; however, it applies only to prejudgment awards of disability—that is, disability ratings that existed at the time of dissolution.

A hot topic in recent litigation has been how to handle postdissolution conversions of retired pay to VA disability payments. In April 2006, the Colorado Court of Appeals held that a servicemember who, after dissolution, waived some of his retired pay in return for VA disability payments, was required to indemnify his former spouse for the reduction in the retired pay available for division.⁴⁹ The court held that the former spouse had a vested property interest in the retirement and indemnification was required, notwithstanding the absence of a specific indemnity provision. This is the majority rule in states that have considered the issue,⁵⁰ although a minority of state courts⁵¹ have held that the USFSPA and case law prohibit any indemnity for the VA waiver, even for postdissolution conversions of retirement to disability.

Spouse Eligibility for Military Benefits After Dissolution

Though the general rule is that a dissolution terminates the former spouse's right to receive any military benefits, there are exceptions to this. These are discussed below.

20/20/20 Rule

Pursuant to 10 U.S.C. § 1072(2)(F), a former spouse of a servicemember is defined as a dependent and, therefore, entitled to all military benefits and installation privileges, including medical, commissary, military exchanges (PX/BX), as well as other amenities, such as access to bowling alleys and theaters. This eligibility requires that: (1) the former spouse was married to the servicemember for at least twenty years; (2) the servicemember had at least twenty years of creditable service; and (3) there was at least a twenty-year overlap between the marriage and the military service.

20/20/15 Rule

Pursuant to 10 U.S.C. § 1072(2)(G) and (H), a spouse who has twenty years of marriage to a servicemember with twenty years of service, but with between fifteen and twenty years of overlap between the marriage and the military service, qualifies for only one year of transitional medical benefits.

Termination of Benefits

Under the 20/20/20 Rule and the 20/20/15 Rule, the former spouse's remarriage terminates the medical benefits and suspends the other benefits during the remarriage. Medical benefits also are suspended while the former spouse is covered by an employer-sponsored health-care plan.

Temporary Family Support

Each branch of the armed forces has a regulation requiring its members to provide interim support to their dependents, on separation, in the absence of a court order.⁵² Because the U.S. Army and Air Force have the overwhelming majority of servicemembers in Colorado, only their regulations are covered in this article.

Army Regulation 608-9

Army Regulation 608-9, Family Support, Child Custody, and Paternity,⁵³ requires servicemembers to pay temporary support, in the absence of a court order, based on BAH-II at the with-dependents rate.⁵⁴ The requirements are:

- 1) BAH-II (to a civilian spouse or children not in military housing);
- 2) *pro rata* share of BAH-II each to a civilian spouse and children who do not live with each other;
- 3) difference between BAH-II at the with-dependents rate and the without-dependents rate (to military spouse who has the children); or
- 4) no support required (to a spouse or children in military housing, to a military spouse with no children, or to a military spouse when the children are split between the spouses).

In-kind payments (such as buying groceries or paying bills) do not count toward the support obligation. However, if the servicemember is legally responsible for the lease or mortgage of the home where the family is residing, the servicemember can pay the

lease or mortgage and utilities and offset those payments against the support obligation.⁵⁵

Finally, a battalion or squadron commander (typically a lieutenant colonel) may grant relief from this obligation,⁵⁶ but only under limited circumstances, such as the civilian spouse having a higher income than the servicemember, the spouse committing domestic abuse against the servicemember, or the servicemember paying support for eighteen months.⁵⁷ Note that the regulation does not provide for relief for any other reasons, including infidelity or abandonment.

Air Force Instruction 36-2906

Air Force Instruction 36-2906, Personal Financial Responsibility,⁵⁸ imposes a much simpler obligation on its members in the absence of an agreement or court order: “provide adequate financial support to family members.”⁵⁹ No further guidance is provided. Even when a commander receives a complaint of nonsupport, the commander may require proof of support, including in-kind payments, but cannot define what constitutes an adequate level of support.

Garnishment

Similar to civilian pay, military pay and retirement pay are subject to garnishment for support and maintenance, with very few special requirements. These requirements are discussed below.

Active Duty Military Pay

Active duty military pay is subject to garnishment in accordance with CRS § 14-14-111.5, just like pay from any other employer. However, there are a few limitations to consider:

- 1) a federal regulation⁶⁰ excludes virtually all military allowances from garnishment, essentially allowing only a servicemember’s base pay, plus any professional pay received—for example, for medical personnel—to be garnished;
- 2) other sums also are excluded from garnishment,⁶¹ such as money owed to the United States, taxes, health and insurance premiums, and normal retirement contributions; and
- 3) the maximum amount that may be garnished is between 50 percent and 65 percent of the pay subject to garnishment, depending on the particular facts of the case.⁶²

DFAS has a website⁶³ that includes additional information on garnishing military pay.

Military Retirement Pay

The same DD Form 2293 used for the division of military retirement is used to garnish military retirement pay. The form must be sent to DFAS with a certified copy of the support order and the Notice to Withhold Income. There are no additional requirements to garnish military retirement pay. However, the total percentage of disposable pay subject to garnishment from all court orders, including the payment of a spouse’s share of military retirement pay, may not exceed 50 percent of the disposable retired pay.⁶⁴

VA Disability Payments

By law, VA disability payments are subject to garnishment for child support and maintenance.⁶⁵ However, the procedure is far from streamlined, and usually requires submission of VA Form 21-4138, Statement in Support of Claim,⁶⁶ with a copy of the current support order and any other relevant documents. More information may be obtained from the local VA office.⁶⁷

Conclusion

Family law cases involving servicemembers present a variety of challenging issues. Considerations for the practitioner include establishing whether Colorado has jurisdiction over the parties, both of whom may physically live in the state without being legal residents; ensuring compliance with state and federal laws, which are unique in that they provide protections only to servicemembers; handling parenting issues for a family that likely has little geographic stability; drafting orders to divide military pensions that comply with federal law; protecting the former spouse’s share of the military retirement through SBP or life insurance; resolving conflicts between VA disability payments and the former spouse’s share of the military retirement; advising the former spouse of what benefits, if any, may be available after dissolution; providing for the support of separated family members in the absence of a specific court order; and garnishing military and retirement pay.

Notes

1. Though “service member” is more commonly written as two words, this article follows the lead of Congress, which combined them into one word when drafting the Servicemembers Civil Relief Act (SCRA).

2. The military installations in Colorado are Fort Carson; U.S. Air Force Academy; Peterson Air Force Base (AFB); Schriever AFB; Cheyenne Mountain Air Force Station; Buckley AFB.

3. CRS § 14-10-106(1)(a)(I).

4. DD Form 2058, State of Legal Residence Certificate, available at www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2058.pdf. Please note that military Web pages are notorious for the frequency with which they change their URLs.

5. *Viernes v. District Court*, 509 P.2d 306 (Colo. 1973). Two provisions of the SCRA, codified at 50 U.S. Code App., echo this language with respect to voting (§ 705), and taxation (§ 511):

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

6. *Mulhollen v. Mulhollen*, 358 P.2d 887 (Colo. 1961).

7. CRS § 42-3-104(9).

8. DR Form 2667, Affidavit of Nonresidence and Military Service Exemption from Specific Ownership Tax, available at www.revenue.state.co.us/mv_dir/formspdf/2667.pdf.

9. CRS §§ 14-13-101 *et seq.*

10. CRS § 14-13-102(7).

11. CRS § 14-13-201(1)(a).

12. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, available at www.hcch.net/index_en.php?act=conventions.text&cid=17.

13. Section 584 of the 2008 National Defense Authorization Act for Fiscal Year 2008 (H.R. 1585) would modify the SCRA and expressly include “child custody proceedings” as judicial proceedings covered by the Act. As of June 2008, the bill’s status is in limbo, having been vetoed by President George W. Bush for reasons unrelated to that provision.

14. 50 U.S.C. App. § 201(b)(1).

15. 50 U.S.C. App. § 201(b)(2).

16. Note that this does not mean within ninety days of the deployment that may have prevented the appearance, but within ninety days of release from active duty. This technically could result in a servicemember seeking to overturn a default judgment years after it was entered.

17. See www.military-divorce-guide.com/sites/default/files/docs/sample-skra-stay.pdf (sample language for a motion to stay the proceedings).

18. U.S. General Accounting Office, “Military Personnel: Longer Time Between Moves Related to Higher Satisfaction and Retention” (Aug. 2001), available at www.gao.gov/new.items/d01841.pdf.

19. *Spahmer v. Gullette*, 113 P.3d 158 (Colo. 2005).

20. See usmilitary.about.com/od/terrorism/a/deploylength.htm. Special Forces personnel typically deploy more frequently and for shorter durations.

21. Presentation to the Readiness and Management Support Subcommittee, Senate Armed Services Committee, by Lieutenant General Walter E. Buchanan III, Commander, U.S. Central Command, Air Forces (April 20, 2005), available at armed-services.senate.gov/statemnt/2005/April/Buchanan%2004-20-05.pdf.

22. *Marriage of DePalma*, No. 06CA1478 (Colo.App. 2007).

23. Potential areas of litigation involving *DePalma* include a servicemember seeking to delegate parenting to a friend or neighbor, rather than a spouse or family member; whether a primary residential parent who deploys can delegate the majority parenting time to a third party rather than to the other parent; disagreements between the remaining local parent, who may make day-to-day decisions that are at odds with the household rules where the children are staying, such as bed times, hygiene, or watching television; scheduling issues between the parent who chooses an activity for the children that conflicts with the “parenting time” of the person with whom the children are staying.

24. Servicemembers who entered active duty after September 8, 1980 receive a “high-three” monthly retirement payment of (2.5 percent times years of service) times (average of highest thirty-six months of base pay). Servicemembers who entered active duty prior to that date receive a po-

tentially more favorable “final pay” retirement. Servicemembers who entered active duty after August 1, 1986 may opt to be under the less favorable “redux” system, by receiving a career status bonus after sixteen years of service. For more information, see www.military-divorce-guide.com/military-retirement-types.htm.

25. The Thrift Savings Plan is the same as that offered to federal civilian employees, which is beyond the scope of this article, except to point out that: (1) the Uniformed Services Former Spouses Protection Act (USFSPA) jurisdictional requirement does not apply to divide it; and (2) contributions to the plan are reflected on the Leave & Earnings Statement. See the federal Thrift Savings Plan website for more information and sample language for court orders: www.tsp.gov.

26. *McCarty v. McCarty*, 453 U.S. 210 (1981).

27. USFSPA, codified at 10 U.S.C. § 1408.

28. 10 U.S.C. § 1408(a)(4) defines “disposable retired pay” as the total retired pay, minus (1) debts owed to the U.S. government; (2) court-martial forfeitures; (3) retired pay waived to receive disability payments; and (4) Survivor Benefit Plan (SBP) premiums. The first two deductions are uncommon, and the latter two are discussed below.

29. The “10/10” rule has led to confusion among servicemembers and attorneys alike; the military retirement may be divided with fewer than ten years of service, but the retiree will have to pay his or her former spouse directly, because Defense Finance and Accounting Service (DFAS) cannot make such payments. There have been periodic attempts to eradicate the ten-year requirement, including a 2006 bill approved by the Senate Armed Services Committee that ultimately did not pass Congress. See Philpott, “Ex-Spouse 10-yr Rule Hit” (May 2006), available at www.military.com/features/0,15240,98524,00.html.

30. 10 U.S.C. § 1408(c)(4).

31. *In re Marriage of Akins*, 932 P.2d 863 (Colo.App. 1997).

32. *In re Marriage of Gallo*, 752 P.2d 47 (Colo. 1988).

33. *In re Marriage of Hunt*, 909 P.2d 525 (Colo. 1995).

34. Reservists may retire after twenty years of creditable service, or at least fifty points in a given year, but do not start receiving retirement payments until the age of 60. The number of points accumulated each year may vary, so substitute “points” for “months of service” in this formula, and review the servicemember’s chronological statement of retirement points for a breakdown of accumulated points. For information on obtaining the point breakdown for each of the branches, see www.military-divorce-guide.com/reserve-family-law.htm.

35. This method is authorized, even over the servicemember’s objection, when the retirement is not yet vested. *In re the Marriage of Riley-Cunningham*, 7 P.3d 992 (Colo.App. 1999).

36. See DFAS, “Dividing Military Pay,” available at www.dfas.mil/militarypay/garnishment/Speech5.pdf.

37. See www.military-divorce-guide.com/sites/default/files/docs/sample-military-retirement.pdf (sample language for dividing a military retirement).

38. DD Form 2293, Application for Former Spouse Payments from Retired Pay should be sent to DFAS. The form is available at www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf.

39. 10 U.S.C. § 1448(a)(3)(A).

40. *In re the Marriage of Payne*, 897 P.2d 888 (Colo.App. 1995).

41. There have been occasional “open season” periods, when a retiree who did not previously opt for SBP coverage may, on payment of the premiums that would have been owing, enroll in SBP.

42. DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552, available at www.psapac.navy.mil/forms/DD-Forms/DD0149.pdf.

43. See www.military-divorce-guide.com/sites/default/files/docs/sample-sbp-deemed-election.pdf (sample deemed election letter).

44. A servicemember separated prior to completing twenty years of service may receive some form of separation payment, such as the Voluntary Separation Incentive (VSI). These payments are divisible marital assets, even if received after dissolution. *In re Marriage of Heupel*, 936 P.2d 561 (Colo. 1997).

45. Presentation of Thomas Tower, Assistant Director of Compensation, Office of the Deputy Under Secretary of Defense, Military Personnel Policy, to the July 25, 2005 Veterans Disability Benefits Commission, available at tinyurl.com/6pnmln.

46. See www.military-divorce-guide.com/va-disability.htm (more detailed information about U.S. Department of Veterans Affairs disability payments, links to rate tables, and waiver calculators).

47. *Mansell v. Mansell*, 490 U.S. 581 (1989).

48. *In re Marriage of Franz*, 831 P.2d 917 (Colo.App. 1992).

49. *In re Marriage of Warkocz*, 141 P.3d 926 (Colo.App. 2006). The *Warkocz* decision followed a more narrowly based 2004 decision, *In re Marriage of Lodeski*, 107 P.3d 1097 (Colo.App. 2004), which held that a servicemember who effected a postjudgment conversion of retirement into disability, thereby failing to pay the specific dollar amount of retirement specified in the decree, could be held in contempt.

50. See, e.g., *Marriage of Gaddis*, 957 P.2d 1010 (Ariz.App. 1997); *In re Marriage of Neilson and Magrini*, 792 N.E.2d 844 (Ill.App. 2003); *In re Marriage of Gabagen*, 2004 Iowa App. LEXIS 926 (2004); *Black v. Black*, 842 A.2d 1280 (Me. 2004); *Nelson v. Nelson*, 83 P.3d 889 (Okla.Civ.App. 2003); *Dexter v. Dexter*, 661 A.2d 171 (Md.App. 1995); *Krapf v. Krapf*, 786 N.E.2d 318 (Mass. 2003); *Gurtz v. Gurtz*, 186 S.W.3d 435 (Mo.App. 2006); *Evans v. Evans*, 2003-Ohio-4674 (Ohio 2003); *Johnson v. Johnson*, 37 S.W.3d 892 (Tenn. 2001) (and cases cited therein).

51. See, e.g., *Clauson v. Clauson*, 831 P.2d 1257 (Alaska 1992); *Davis v. Davis*, 777 S.W.2d 230 (Ky. 1989); *Wright v. Wright*, 594 So.2d 1139 (La.App. 1992); *Strong v. Strong*, 8 P.3d 763 (Mont. 2000); *Longo v. Longo*, 266 Neb. 171 (2003); *Loria v. Loria*, 189 S.W.3d 797 (Tex.App. 2006); *In re Marriage of Jennings*, 958 P.2d 358 (Wash.App. 1998).

52. See www.military-divorce-guide.com/family-support-military.htm for information about the Navy, Marines, and Coast Guard regulations.

53. Army Regulation 608-9, Family Support, Child Custody, and Paternity, available at www.army.mil/usapa/epubs/pdf/r608_99.pdf.

54. BAH-II is what was formerly known as "Basic Allowance for Quarters," or BAQ. It consists of the bare housing allowance, without any additional locality allowances. For a breakdown of the rates for each pay grade, see the second page of the military pay table at www.dfas.mil/militarypay/militarypaytables.html.

55. Army Regulation 608-99, Paragraph 2-9(d).

56. *Id.* at Paragraph 2-14.

57. *Id.*

58. Air Force Instruction 36-2906, Personal Financial Responsibility, available at www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf.

59. *Id.* at Paragraph 3.2.1.

60. 5 C.F.R. § 581.104.

61. 5 C.F.R. § 581.105.

62. 5 C.F.R. § 581.402.

63. See DFAS website, www.dfas.mil/garnishment/military.html.

64. 10 U.S.C. § 1408(e)(1).

65. 42 U.S.C. § 659(h)(1)(A)(v).

66. VA Form 21-4138, Statement in Support of Claim, available at www.veterans.ogov.com/forms/21-4138.pdf.

67. In Colorado, the VA Regional Office is at 155 Van Gordon St., Lakewood, CO 80228 (mailing address: P.O. Box 25126, Denver, CO 80225); telephone: (800) 827-1000; fax: (303) 914-5879. ■