

# **DRAFTING MILITARY RETIREMENT AGREEMENTS**

## **Colorado Office of Dispute Resolution September 18, 2018**

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### **I. Traditional Defined Benefit Pension**

#### **A. High Three (Most common)**

1. Service commenced 9/8/1980 or later
2. Retirement Multiplier 2.5% x yrs service. 10 U.S.C. §1409(b)
3. Multiplied by avg high 36 mos of base pay.
4. Annual COLA based upon CPI

#### **B. Final Pay**

1. Service commenced before 9/8/1980
2. Retirement multiplier 2.5% x yrs service.
3. Multiplied by final base pay
4. Annual COLA based upon CPI

#### **C. Redux. (Rare)**

1. Service after 8/1/1986 AND selected Career Status Bonus
2. Retirement multiplier 2% for 1st 20 yrs service, then 3.5% per year of service thereafter up to maximum 75%
3. Multiplied by highest 36 mos of base pay
4. Annual COLA 1% below CPI, with "catch-up" at 62

### **II. Blended Retirement (*NEW FOR 2018*). Combines defined benefit plan with TSP. Rationale: 81% of members leave military with no retirement**

- #### **A. Active Duty** - mandatory for all members who join after 1/1/2018, except those with prior service must make election within 30 days. Optional for members who joined 1/1/2006 - 12/31/2017, must make election during 2018 for "legacy" or blended retirement

- B. Reserves** - Over 4320 points must remain in “legacy” system. Under 4320 points may elect to Blended Retirement during 2018
- C. Contribution Limit:** up to \$18.5K/yr into Roth or Traditional TSP
- D. Government Match**
  - 1. 1% to everyone after 60 days (vests at 2 yrs), even if no member contribution
  - 2. Up to another 4% match (so 5% total) after 2 yrs
- E. Continuation Pay** at 12 yrs service, 2.5-13x monthly base pay (0.5-6.5x for reserves), depending upon duty position
- F. Defined benefit plan reduced**, 2% multiplier x high three instead of 2.5%
- G. Lump Sum Election.** At retirement, can elect lump sum of 25% or 50% of present value of retirement at 20 yrs, in return for reduced monthly payments
- H. No spousal consent required.** Note that election will reduce former spouse share (multiplier 2% instead of 2.5%). Reserve jurisdiction over Continuation Pay?
- I. More Information:**
  - 1. <http://militarypay.defense.gov/BlendedRetirement/>
  - 2. <http://militarypay.defense.gov/Portals/3/Documents/BlendedRetirementDocuments/BRS%20Frequently%20Asked%20Questions%205.01.2017.pdf?ver=2017-05-02-095830-163>

### III. “Frozen Benefit Rule”

- A. 2017 National Defense Authorization Act** enacted on 12/23/2016.
- B. Freezes Former Spouse Share of Retirement At Dissolution.** Section 641(a) of Act modifies & restructures definition of “disposable retired pay” in 10 U.S.C. §1408(a)(4) to add a new (a)(4)(B) which reads: “For purposes of subparagraph (A), the total monthly retired pay to which a member is entitled shall be— 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 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.”
- C. Applicable Date.** “any division of property as part of a final decree of divorce, dissolution, annulment, or legal separation involving a member of the Armed

Forces to which section 1408 of title 10, United States Code, applies that becomes final after the date of the enactment of this Act.”

- D. Applies When Still in Military.** When already retired, use traditional coverture formula, as there would be no post-dissolution enhancements to pay to exclude.
- E. New Formula.** Requires calculation of hypothetical share member would be entitled to receive at time of dissolution given rank & time of service when decree is issued. 2-step process.
  - 1. Calculate hypothetical retirement at time of decree** (ignoring inability to retire with < 20 yrs service). So member with 12 yrs would be entitled to receive 30% of the high-three of his base pay at the time of dissolution (2.5% x 12 years).
  - 2. Modified Coverture Formula** to calculate spousal share based upon service through decree, NOT through retirement. Marital share, to be applied against the hypothetical retirement from step 1, is therefore:

$$\frac{\text{Months of marriage overlapping service}}{\text{Months of service at time of decree}}$$

- F. Effect.** Reduces spouse’s share of retirement when servicemember still on active duty.
- G. Sample Language** at EXH A
- H. High-Three Calculator** at <http://bit.ly/2IQv9QT>. Will need to copy Google Sheet over to own account to edit. See filled out sample at EXH B
- I. More Information.**  
<https://www.dfas.mil/garnishment/usfspa/NDAA--17-Court-Order-Requirements.html>

#### IV. CALCULATING MARITAL SHARE

- A. Coverture Formula.** In re: Marriage of Hunt, 909 P.2d 525 (Colo. 1995). "Time Rule" formula, or "coverture" fraction. Spouse's share is one-half of months of marriage overlapping military service, divided by total months of creditable service at time of retirement. *Still used when member already retired at dissolution, and non-military defined benefit pension plans.*

- B. Method of Division: Net Present Value.** Authorized by Hunt, presumably still permitted. And Ct may use NPV even when pension is not yet vested (i.e. before 20 yrs), per In re: Marriage of Riley-Cunningham, 7 P.3d 992 (Colo. App. 1999).
- C. Method of Division: Deferred Distribution.** Calculate marital share, defer distribution until retirement, per Hunt.
- D. Reserve Jurisdiction.** Wait until actual retirement.
- E. Reserves/National Guard.** Similar formula applies - marital share is reserve retirement points acquired during marriage divided by total reserve retirement points upon retirement. Per In re Marriage of Beckman, 800 P.2d 1376 (Colo. App. 1990), unvested reserve points are divisible.

**V. SAMPLE RETIREMENT LANGUAGE (EXH A)**

- A. 10/10 rule.** Requires at least 10 years of marriage overlapping military service (10/10 rule).
- B. Order needs:**
  - 1. SCRA.** Indication that rights under Servicemembers Civil Relief Act were respected or waived,
  - 2. Jurisdiction.** State basis of jurisdiction over servicemember (residence, domicile, or consent),
  - 3. Marriage date,** and indication that 10/10 rule met,
  - 4. “Frozen Benefit” Data:** Current rank, years of service, and High-3 pay. If don't have 36 mos LES's, use pay chart at:  
<https://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html>
- C. Send to DFAS** with DD Form 2293 and certified copies of decree & order dividing retirement.
- D. No Deadline,** but DFAS only pays prospectively after processed (which takes about 90 days after retirement), so need mechanism for payment from servicemember in interim.
- E. Maximum amount** DFAS pays is 50% of disposable retired pay.

## VI. DISABILITY PAYMENTS

**A. VA Disability.** Servicemember with service-connected disability entitled to receive disability payments.

### **B. Disability Ratings.**

1. If rating under 50% OR under 20 yrs service, waive retired pay dollar for dollar.
2. If 50% or higher rating AND 20 yrs service, waiver phased out effective 2014. 10 U.S.C. §1414.
3. VA payment based solely upon disability and dependents, not rank or years of service. Rate Tables at [https://www.benefits.va.gov/COMPENSATION/resources\\_comp01.asp](https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp)
4. Examples:
  - a) 30% no dependents = \$417 (waiver)
  - b) 40% spouse & child = \$715 (waiver)
  - c) 80% spouse & child = \$1816 (No waiver)
  - d) 100% spouse & child = \$3261 (No waiver)

**C. Combat-Related Special Compensation** rating of at least 10%. No waiver.

### **D. Indemnity for VA Waiver.**

1. **Prejudgment VA Waiver**, which existed at time of divorce, never divisible, no indemnity could be ordered. Mansell v. Mansell, 490 U.S. 581 (1989), In re: Marriage of Franz, 831 P.2d 917 (Colo. App. 1992)
2. **Post-Judgment - Old Law.** Majority rule, including CO, required indemnity for post-decree conversions of retirement to disability, theory was retiree was frustrating former spouse's vested retirement interest. In re: Marriage of Warkocz, 141 P.3d 926 (Colo. App. 2006).
3. **New Law - No Indemnity.** Howell v. Howell, 137 S.Ct 1400 (2017). Court applied Mansell to all VA Waivers, termed "semantic" distinction between pre-decree and post-decree waiver. Recognized potential for hardship: "a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support."

4. **IRM Tozer**, 2017 COA 151 (Colo. App. 2017).
  - a) At dissolution, H on active duty, trial Ct divided retirement, reserved jurisdiction over maint in case of VA waiver.
  - b) H later put on PDRL, received disability retirement & VA disability.
  - c) W argued H defeated her share by electing disability, first sought legal relief to enforce division by dividing disability - denied. W then sought equitable relief of indemnity - denied. W had remarried, so ct denied req for maint in lieu of retirement.
  - d) Trial court properly denied relief, Howell overrules Warkocz. “The *Howell* takeaway is clear. Military retirement disability benefits may not be divided as marital property, and orders crafted under a state court’s equitable authority to account for the portion of retirement pay lost due to a veteran’s post-decree election of disability benefits are preempted. (Para. 21).
  
5. **IRM Longmire**. Currently pending in Court of Appeals. May address unanswered questions, such as effect of pre-Howell orders, agreements to indemnify, pre- or post-Howell?

**E. Disability is income for maintenance & child support.** IRM Nevil, 809 P.2d 1122 (Colo.App. 1991). Rose v. Rose, 481 US 619 (1987)

**F. Temporary Disability Retired List (TDRL).** 10 U.S.C. §1202 & §1205

1. Servicemember with condition that may be temporary.
2. Reviewed every 18 months, and by 5 yrs, must be either (1) returned to duty, (2) PDRL if under 20 yrs, or (3) retired if eligible.
3. Payment greater of (1) 2.5% x base pay x years of service, or (2) base pay x disability %. 10 U.S.C. §1401
4. CO Law:
  - a) Under 20 yrs, not divisible. IRM Williamson, 205 P.2d 538 (Colo. App. 2009).
  - b) Over 20 yrs, divisible to extent payment based on longevity and exceeds normal VA disability payment. IRM Poland, 264 P.3d 647 (Colo. App. 2011)

**G. Permanent Disability Retired List (PDRL).** 10 U.S. Code §§ 1201 & 1204

1. Servicemember not returned to duty due to permanent medical condition.
2. Disability rating at least 30%

3. Under 20 years of service.
4. Payments: High 3 pay x greater of (1) disability rating (max 75%), or (2) 2.5% x yrs service.
5. Must waive disability dollar-for-dollar to receive VA disability, even for ratings of 50% or higher. 10 U.S.C. § 1414(b)(2)
6. No clear law on divisibility, "but for" test in Williamson suggests not divisible.

## VII. RECEIPTS IN LIEU OF RETIREMENT

- A. **Career Status Bonus.** See *February 2005 Army Lawyer* practice note:  
[https://www.jagcnet.army.mil/DOCLIBS/ARMYLAWYER.NSF/0/d6ee7a43130f797a85256fab005f321e/\\$FILE/TJAGLCS%20Practice%20Note.pdf](https://www.jagcnet.army.mil/DOCLIBS/ARMYLAWYER.NSF/0/d6ee7a43130f797a85256fab005f321e/$FILE/TJAGLCS%20Practice%20Note.pdf)
- B. **Lump-Sum Payment at Retirement** for those in Blended Retirement System.
- C. **VSI/SSB.** Divisible asset. IRM Heupel, 936 P.2d 561 (Colo. 1997). Must repay if reenter active duty
- D. **Disability Severance Pay.** Yrs of active service (max 12) x 2 x highest base pay. Available if not returned to service after TDRL, and disability rating 30% or lower. 10 U.S.C. § 1212.
- E. **Administrative Separation.** Full or partial separation pay may be available.

## VIII. SURVIVOR BENEFIT PLAN (SBP)

- A. **"Insurance policy"** on retirement. If retiree dies, pays surviving beneficiaries monthly amount equal to 55% of "designated base amount".
- B. **Maximum "designated base amount"** is base pay. Required to elect maximum spousal coverage if married, unless spouse consents. 10 U.S.C. §1448(a)(3)(A). No consent required if member already divorced at retirement.
- C. **Potential Beneficiaries:**
  1. Spouse or former spouse (latter must be unmarried if under 55), as long as at least one yr of marriage or a child. 10 U.S.C. §1447. *Can only have one beneficiary, cannot allocate payments between multiple beneficiaries.*
  2. Children if under 18 or in college and under 22, or

3. Disabled children, if disability happened while under 18 or in college under 22.
- D. Premiums.** Spouse coverage. 6.5% of designated base amount. Stop once retiree is 70 and paid 360 months of premiums. 10 U.S.C. §1452(j)
- E. Premium Responsibility.** DFAS deducts premium from retirement before division, but court has discretion to allocate premium separate from retirement payments (DFAS will not honor). IRM Payne, 897 P.2d 888 (Colo. App. 1995). Typically divided equally in El Paso County, have heard second-hand of cases where courts required spouse to pay it all.
- F. Deemed Election.** Rather than relying upon servicemember to opt for SBP coverage, or to convert spouse to former spouse coverage, former spouse can request election directly from DFAS. Use DD Form 2656-10. *Must use to protect former spouse, and yourself from malpractice claim!*
- G. Deadline.** **DEEMED ELECTION REQUEST, OR CONVERSION OF SPOUSE TO FORMER SPOUSE COVERAGE AFTER RETIREMENT, MUST BE WITHIN ONE YEAR OF ORDER REQUIRING SBP COVERAGE.**
- H. Failure to Elect.**
1. Cannot later elect SBP if not selected at retirement. Will need life insurance.
  2. Failure to change beneficiary from spouse to former spouse. May be able to fix by submitting *DD Form 149, Application for Correction of Military Record* to applicable Board for Correction of Military Records.

## **IX. JURISDICTION.**

- A.** Personal jurisdiction over servicemember alone insufficient to divide military retirement.
- B.** Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408(c)(4) requires:
1. Residence not due to military orders,
  2. Domicile, or
  3. Consent.
- C.** USFSPA preempts state law, and CO lacks subject-matter jurisdiction to divide retirement absent domicile or affirmative conduct of servicemember

demonstrating express or implied consent. IRM Booker, 833 P.2d 734 (Colo. 1992), IRM Akins, 932 P.2d 863 (Colo. App. 1997).

- D. “Consent” includes filing, owning a house, and may include, anecdotally, actively participating in dissolution proceeding.

**X. AUTHORITY TO DIVIDE RETIREMENT**

**A. Federal Law.** The 1982 Uniformed Services Former Spouses Protection Act, codified at 10 U.S.C. §1408(a)(4).

1. Overturned McCarty v. McCarty, 453 U.S. 210 (1981), where Supreme Court ruled that states could not divide military retirement.
2. Authorizes, but not require, states to divide “disposable retired pay”, which is total retired pay minus amounts:
  - a) Owed to U.S. due to previous retired pay overpayments.
  - b) Deducted from retired pay as result of court-martial forfeiture.
  - c) Waived to receive VA Disability.
  - d) Survivor Benefit Plan (SBP) premiums.
3. 2016 changes added “frozen benefit rule” discussed below, which limits disposable retired pay subject to division when member still on active duty at time of dissolution.

**B. Colorado.** IRM Gallo, 752 P.2d 47 (Colo. 1988). Military retirement is divisible property interest.

**XI. Thrift Savings Plan.** Same plan as civilian federal employees, managed by OPM, participation voluntary, must elect 1% minimum to defer to Roth or Traditional. No matching except if fall under Blended Retirement. More Information: <https://www.tsp.gov/index.html>. No special rules to divide, use traditional coverture. Sample language at EXH C.

**EXH A - SAMPLE LANGUAGE TO DIVIDE DEFINED BENEFIT PLAN**

- a. **Husband/Wife** (hereinafter “member” for the purposes of this section) has served in the U.S. armed forces, and may be entitled to receive a military retirement, which is subject to division per Colorado law and 10 U.S. Code §1408(a). This Court has jurisdiction to divide the retirement because member consented to jurisdiction **\*\*OR** resides in and maintains Colorado as legal domicile. At all times member’s applicable rights under the Servicemembers Civil Relief Act have been respected.

- Jurisdiction needs consent, residence not due to military, or domicile. 10 USC 1408(c)(4)
- SCRA language required by 10 USC 1408(b)(1)(D)

- b. The marital share of the military retirement is \_\_\_\_\_%, calculated as follows:

**\*\*\* days/months/points** overlapping marriage & military service

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**\*\*\* days/months/points** of military service through date of decree

“Frozen Benefit Rule” per 2017 National Defense Authorization Act. Instead of traditional Hunt coverture formula, military retirements freeze spouse share of retirement to benefits earned as of date of divorce, plus COLAs.

Numerator is same - months of marriage overlapping service, but denominator is total months of service at time of decree, NOT time of retirement.

Effect - gives spouse higher share of smaller pool, and deprives spouse of post-decree enhancements (promotions & longevity increases)

- c. **Husband/Wife** (hereinafter “former spouse” for purposes of this section) is awarded one-half of the marital share, or \_\_\_\_\_%. Former spouse is awarded a *percentage share* of the retirement, and any references herein to specific dollar amount are solely estimates for planning purposes, and shall *not* be construed as an award of a fixed dollar amount.

Using percentage gives former spouse benefit of COLAs. Using fixed dollar amount (rare) provides flat amount with no adjustment for COLAs. 10 U.S.C. 1408(d)(8).

- d. Former spouse is entitled to a share of the actual disposable retired pay received, whether active duty or reserve, and is not entitled to retirement if none is received. Days and points for retired pay are interchangeable on a point-per-day basis, and to the extent points are referenced but member receives an active duty retirement, such points shall be treated as days, and to the extent days are referenced but member receives a reserve retirement, such days shall be treated as points.

Per 10 USC 1408(a)(4)(A), "disposable retired pay" means gross pay minus:

- Debts to government
- Court-martial forfeitures
- VA Waiver (if 40% or lower disability). No indemnity per Howell vs Howell, 137 S.Ct 1400 (2017) (overruled CO's IRM Warkocz)
- SBP premium for benefit of former spouse

- Unvested reserve points are divisible - IRM Beckman, 800 P.2d 1376 (Colo. App. 1990)
- Points towards retirement interchangeable with days on point for day basis. 10 U.S. Code §12733, but to avoid litigation or return to court, should address

**\*\*\* IF NOT YET RETIRED**

- e. On the date of the decree, member's high-3 pay was \$\_\_\_\_\_ and member had the rank/pay grade of \_\_\_\_\_, with \_\_\_\_\_ years/months of creditable service. Former spouse's share is the percentage defined above multiplied by the disposable retired pay member would be entitled to receive if member retired with this pay and creditable service, plus COLAs.

Frozen Benefit Rule requires military retirement to be calculated based upon following at time of decree:

- High Three Base Pay
- Member's Rank
- Member's Years of Service.

10 USC 1408(a)(4)(B). As result, DFAS requires this data for direct payment of retirement..

See spreadsheet at EXH B. Editable Google Sheet (will need to make own copy) at: <http://bit.ly/2IQv9OT>

- f. Member shall advise former spouse of a retirement or separation from the military or from active duty at least 90 days in advance. Within 14 days of receipt, member shall provide former spouse with a copy of all pertinent documents, including retirement/separation orders, memorandum of release from active duty, DD214, Retiree Account Statement, Statement of Service, chronological statement of retirement points, VA disability determinations, retirement estimates, documents reflecting separation or other pay received in lieu of retirement, etc.

**\*\*\* IF ALREADY RETIRED:**

- g. Former spouse's share of the military retirement is calculated by multiplying former spouse's percentage defined above by member's disposable retired pay, which is presently \$ \_\_\_\_/mo. Former spouse's share is about \$ \_\_\_\_/mo.

When already retired, Frozen Benefit Rule is effectively N/A (because there will not be any post-divorce enhancements to pay). So use traditional coverture formula.

**\*\*\* ALL CASES**

- h. Former spouse's share of the military retirement is reportable as income to former spouse, and deductible from member's income for tax purposes. Any retirement payments which member makes directly to the former spouse shall be based upon the pre-tax disposable retired pay.

**\*\*\* SELECT IF MORE THAN 10 YRS OVERLAP**

- i. Because the parties were married on \_\_\_\_\_, they have more than 10 years of marriage overlapping the military service and former spouse shall receive direct payment from DFAS, pursuant to 10 U.S.C. § 1408(d). Former spouse shall promptly apply to the Defense Finance and Accounting Service (DFAS) for **\*\*\*his/her** share of the military retirement, utilizing DD Form 2293, or any other necessary form. Payment of the retirement remains member's obligation, and member shall pay former spouse's share of the disposable retired pay to former spouse within 5 days of each payment if at any time DFAS did not make a direct payment of the share, including while awaiting direct payments.

10-Year Rule, per 10 USC 1408(d)(2).

**\*\*\* SELECT IF FEWER THAN 10 YRS OVERLAP**

- j. Because the parties do not have more than 10 years of marriage overlapping member's military service, member shall pay former spouse's share directly to former spouse within 5 days of receipt of each payment.

**\*\*\* ALL CASES**

- k. Within 14 days of any change to the disposable retired pay, member shall provide former spouse with the Retiree Account Statement, VA documents, or any other documents relevant to the change. This does not apply to annual COLAs if DFAS is directly paying former spouse's share of the retirement.

- l. Pursuant to 5 U.S.C. §552a(b)(11), this Order is a continuing court order directing DFAS to provide to former spouse upon request all information pertaining to member's retirement, including amounts, dates of service, and periodic Retiree Account Statements. Should DFAS or another agency require any further release for such information, member shall provide an executed release to former spouse within 14 days of former spouse sending such release to member.
- m. All retirement payments due to former spouse shall be deemed a nondischargeable "domestic support obligation" incident to divorce pursuant to 11 U.S.C. §523(a)(15).
- n. The Court retains jurisdiction to implement and enforce the allocation of military retirement, including entering appropriate orders should member receive financial benefits in lieu of some or all of the military retirement, merges the military retirement credit into another retirement such as FERS, participates in any program which either makes lump sum payments, or reduces the retirement available for division, such as receipt of the Career Status Bonus or Blended Retirement, or for any other reason where indemnity is not prohibited by law.

Payments received in lieu of retirement may be divisible. [IRM Heupel](#), 936 P.2d 561 (Colo. 1997) (concerns VSI/SSB).

***\*\*\*EDIT FOLLOWING SBP PARAS AS APPROPRIATE, DEPENDING UPON AGREEMENTS REACHED AND RETIRED VS ACTIVE STATUS.***

***\*\*\*USE IF ALREADY RETIRED AND MEMBER SELECTED "SPOUSE" SBP COVERAGE. NOTE THAT IF SBP WAS NOT SELECTED AT RETIREMENT (SUCH WAIVER WOULD REQUIRE SPOUSAL CONSENT), IT IS TOO LATE NOW, AND PARTIES SHOULD CONSIDER PRIVATE LIFE INSURANCE***

- i. Member previously elected Survivor Benefit Plan or Reserve Component Survivor Benefit Plan (hereinafter "SBP") to protect former spouse's share of the retirement in the event of member's death. Within 60 days, member shall convert such coverage by designating former spouse as "former spouse beneficiary", and provide to former spouse proof of enrollment, and any other forms pertaining to SBP within 30 days of receipt or execution.

### Survivor Benefit Plan

- Without SBP, retirement dies when retiree dies
- With SBP, when already retired, spouse/former spouse can continue to receive benefits
- Can only have one primary beneficiary, children can be contingent
- Court can require SBP & allocate premium. IRM Payne, 897 P.2d 888 (Colo. App. 1995). In El Paso County, most commonly ordered shared equally, or per shares of retirement if roughly comparable
- SBP terminates if former spouse remarries under age 55
- See 10 USC 1448 & 1450

### **\*\*\*USE IF NOT YET RETIRED**

- ii. Prior to retirement, member shall make an irrevocable election to participate in the Survivor Benefit Plan (SBP), designating former spouse as the “former spouse beneficiary” for an annuity which pays an amount not less than former spouse’s share of the retirement. If in the reserves, member shall participate in the Reserve Component Survivor Benefit Plan, electing Option C (Immediate Annuity) within 90 days of receiving the “20-year” letter of entitlement to Reserve retirement pay. Member shall provide former spouse proof of enrollment, and any other forms pertaining to SBP within 30 days of receipt or execution.

Former spouse should always do “deemed election” using DD form 2656-10, to ensure SBP in case member does not elect at retirement.

***Deemed election must be done within 1 year of court order!!***

- iii. The parties shall divide equally the costs of the SBP, and to the extent member is assessed any greater portion by DFAS, former spouse shall compensate member for the difference every six months.

Per 10 USC 1408(a)(4)(A)(iv), SBP premium is deducted before retirement is allocated, so parties effectively pay premium per their shares of retirement. As long as shares roughly equal, this is okay, but if former spouse share much lower and parties are to divide premium equally, will need reimbursement mechanism that does not involve DFAS.

***\*\*NOTE – IN PARA. BELOW, DIVIDE (NOT MULTIPLY) SPOUSE’S ESTIMATED DOLLAR AMOUNT BY 0.55 TO DETERMINE THE DESIGNATED BASE AMOUNT. EXAMPLE, IF***

***SPOUSE SHARE IS \$1200/MO, DESIGNATED BASE AMOUNT IS \$2182 (\$1200 / 0.55).***

- iv. The estimated current monthly payment of the retirement is \$\_\_\_\_\_, and former spouse will receive \_\_\_\_\_% of that, or about \$\_\_\_\_\_/mo plus COLAs. As SBP pays 55% of the “designated base amount”, that amount necessary to protect former spouse is currently estimated to be \$\_\_\_\_\_, plus COLAs.

Premium is 6.5% of “designated base amount”. And payout is 55% of “designated base amount.”

## Military Retirement Calculation

### 1. Spouse % Share

Entered Active Duty	1/23/1996
Date of Marriage	8/19/2003
Date of Earlier of Decree/Retirement	8/1/2017
Total Service (Days)	7861
Marital Overlap (Days)	5096
Marital %	64.83%
<b>Spouse %</b>	<b>32.41%</b>

### 2. Spouse \$ Amount (already retired)

Disposable Retired Pay	
Marital Amount (Retirement x Marital %)	\$0.00
Retiree Amount	\$0.00
<b>Spouse Amount</b>	<b>\$0.00</b>

### 3. High 3 Calculation (not yet retired)

Curr Pay Grade Yrs	E7 over 20
Last Promoted Date	N/A
Last Longevity Date	1/23/2016 E7 over 20
Prior Longevity Date	1/23/2014 E7 over 18
Prior Longevity Date	

Base Pay	# Months	Total	Dates	Pay Grade/Yrs
4567	7	31969	Jan-Jul 2017	E7 over 20
4473	11	49203	Feb-Dec 2016	E7 over 20
4424	1	4424	Jan 2016	E7 over 18
4367	12	52404	Jan-Dec 2015	E7 over 18
4324	5	21620	Aug-Dec 2014	E7 over 18
		0		
<b>TOTAL</b>	<b>36</b>	<b>159620</b>		
<b>High 3:</b>		<b>\$4,433.89</b>		

### 4. Spouse \$ Amount (not yet retired)

Years of Service (days / 365)	21.54
Retirement Multiplier (Years x 2.5%)	53.84%
Retirement at decree (Multiplier x High 3)	\$2,387.32
Marital Amount (Retirement x Marital %)	\$1,547.61
<b>Spouse Amount, Plus COLAs (1/2 Marital Amount)</b>	<b>\$773.80</b>

Historic Pay Charts <https://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html>

## RETIREMENT BENEFITS COURT ORDER

This Order is entered by stipulation of the parties. This Order is intended to be a Retirement Benefits Court Order in compliance with 5 U.S.C. §§ 8435(c), 8467, and 5 C.F.R. part 1653(A). This Order refers to the Participant's Thrift Savings Plan account.

**1. Parties.**

- a. Participant:  
Address:  
Social Security Account Number:  
Date of Birth:
  
- b. Nonmember Spouse (Payee):  
Address:  
Social Security Account Number:  
Date of Birth:

- 2. Domestic relations law.** This Order is entered pursuant to the domestic relations laws of the State of Colorado, in particular C.R.S. §14-10-113 concerning property division to recognize and assign to the Payee that portion of the plan benefits payable with respect to the Participant specified below.
- 3. Relationship of Payee to Participant.** The Payee is the legally separated spouse of the Participant. The Payee and the Participant were married on (DATE OF MARRIAGE) and were legally separated by this Court in this action on (DATE OF SEPARATION/DIVORCE).
- 4. Identity of Plan.** This Order applies to the Thrift Savings Plan and any amended, successor, substitute, or replacement plan which subsequently takes the place of that plan, or into which the benefits payable to the Participant by that plan are transferred. The address of the Thrift Savings Plan is: TSP Legal Processing Unit, Fairfax Post Office, CODIS – PO Box 4390, Fairfax, VA 22038-9998.
- 5. Division of Marital Property.** Payee's share of Member's TSP benefits is:
- a. (PERCENTAGE OF BENEFITS) of the Participant's Plan Account balance as of the date of legal separation (DATE), plus earnings until Payee is paid pursuant to this Order.

- b. Payee shall withdraw her share of plan benefits as determined hereunder from the plan at any time on or after the earliest date on which the plan permits a Payee to do so, or the Payee may direct that all or a portion of her share of plan benefits be paid to an IRA established by her.
- 6. **Duration of payments.** The Payee shall receive full payment pursuant to this Order as soon as administratively feasible.
- 7. **Participant not to interfere with Payee's rights.** The Participant is hereby ordered not to do, or fail to do, any act, or to make any choice or election, or by inaction fail to make any choice or election under the plan, which would interfere in any way with the payment to the Payee of the share of his plan benefits assigned to the Payee by this order. In the event any payment assigned to the Payee by this order is paid to or received by Participant, Participant shall be deemed to have received such payments as trustee for the benefit of Payee and shall immediately pay the same to Payee.
- 8. **Effect of order.** This Order shall not be construed or interpreted to:
  - a. require the TSP to provide any type or form of benefit, or any option, not otherwise provided under the plan;
  - b. require the TSP to provide increased benefits; or
  - c. require the payment of benefits to the Payee which are required to be paid to another payee under an order previously determined to be a Retirement Benefits Court Order compliant with applicable law.
  - d. In the event of any conflict between this clause and any other clause of this order, the provisions of this clause shall prevail.
- 9. **Tax effect.** It is the intention of the court that federal and state income taxes on any distribution received by the Payee under this order shall be borne by the Payee and not by the Participant. The parties intend that the Payee be permitted to place the money into an IRA established separately by her. The plan's obligations to any party shall not be affected in any way by this clause.
- 10. **Reservation of jurisdiction.**
  - a. This court reserves jurisdiction to amend the provisions of this order in light of comments received from (a) the TSP, (b) another court of competent jurisdiction, or (c) any other organization or party, during the process of deciding whether this order is compliant with applicable law.
  - b. This court also reserves jurisdiction to amend or modify the provisions of this order, even after it has been determined to be compliant with applicable law by the Thrift Savings Plan, to modify this order (subject

to Clauses 8 and 9) to deal with any unforeseen tax consequences or other unintended effects of this Order.

BY THE COURT:

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_:

\_\_\_\_\_  
DISTRICT COURT MAGISTRATE/JUDGE

SO STIPULATED

\_\_\_\_\_  
Attorney for the Petitioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for the Petitioner

Dated: \_\_\_\_\_