

LAW REVIEW¹ 10086

Military Family Law Primer²

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Division of Military Retired Pay upon Divorce

Questions often arise when a member of the Guard or Reserve must confront division of military retired pay in divorce proceedings. To see what happens, let's sit down with MAJ Bill Smith, who has five years of active-duty service and nine years of service in the Army Reserve. He married when he left active duty. He has been sued for divorce by Hilda Smith, his wife, and wants to know whether his Reserve pension is in jeopardy. Here are some questions (with answers provided) that are often asked about the division of military retired pay which might help him decide what to do.

Q: I've heard that my pension can be divided under USFSPA. What is that?

A: USFSPA, the Uniformed Services Former Spouses' Protection Act, is a law passed by Congress in 1982 to offer some financial protection to certain former spouses of service members. It allows states to divide military disposable retired pay as marital property upon divorce. It allows some former spouses (through a court order) to be paid a share of "disposable retired pay" by DFAS (Defense Finance and Accounting Service). Disposable retired pay is the total monthly pay to which a retired service member is entitled, less most VA disability pay, federal debt repayments, fines, forfeitures, and Survivor Benefit Plan premiums.

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²In this article, Colonel Sullivan provides detailed information for members of the National guard and Reserve who are involved in divorce proceedings, and for their spouses or former spouses. The article discusses in considerable detail how your military pension and health care entitlement may be affected by a divorce. To read many more articles you can go to <https://www.nclamp.gov/>.

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Q: I thought that my wife wasn't entitled to any part of my pension because we hadn't been married 10 years during my military service. Is that right?

A: No. The "10-year rule" applies only to how the payment is made, directly from you or as a garnishment of your retired pay from DFAS. Hilda must meet the "10-year test" to receive payment from DFAS. When the former spouse has been married to the service member for at least 10 years, during which the member performed at least 10 years of creditable service for retirement purposes, then the Act allows direct payment from DFAS. In such a case, it would be necessary for Hilda to get a court order specifically stating that the award shall be made as direct payment of retired pay and to serve the court order on DFAS. It is a common misconception that this 10-year rule somehow limits or prohibits division of the pension.

Q: Do all states allow military retired pay to be divided as marital or community property?

A: Yes. Only Puerto Rico bars the division of pension rights upon divorce. All states have one method or another of granting the division of military pensions as marital property. An overseas court, however, cannot grant military pension division. DFAS will only honor orders regarding division of retired pay from U.S. courts.

Q: Is there any way the court can divide the retired pay so my spouse won't have to wait until I retire?

A: Some states, such as California, allow payments to be made under court order while the member is still serving in the Guard or Reserve or on active duty. Most states, however, do not. In all states, however, the law allows the present value of the pension to be used as a set-off or trade against other property that the nonmilitary spouse will receive. Thus the retired pay might be traded against the marital residence if the values of each were roughly equal. If the values were not equal and the service member received "too much" of the marital property, the judge could order the service member to transfer other property to the nonmilitary spouse. The court could also order the service member to make regular payments to the other party (called a "distributive award") until the shares of the parties were adjusted as the judge ordered.

Q: If state law allows the retired pay to be divided, how will the division take place?

A: The rules for retired pay division vary from state to state. For example, the court can divide the pension by ordering that a portion be paid to the nonmilitary spouse upon the service member's retirement. This would be paid on a monthly basis as long as the retiree receives payments. The payments could come from the retiree or, if the "10-year rule" set out above is met, directly from DFAS under a court order.

Q: My wife just moved to California. Can it, or any other state, divide my Reserve pension if I live in North Carolina?

A: The answer to this question depends on your legal residence (or domicile). A state has jurisdiction over the military pension if:

- You are a legal resident of that state; or
- You are residing in that state for reasons other than because of military assignment; or
- You consent to the jurisdiction of that state's courts over the division of retired pay in a property division lawsuit.

If none of the above applies, then that state's courts cannot divide your retired pay.

Q: How much of my retired pay will be divided or awarded to my wife?

A: In most states, the court can only divide the "marital portion" of the pension, that is, the portion that was earned during the marriage. The rest of the pension (that earned before marriage or after separation or divorce) is the member's separate property. Courts in many states compute the marital portion by looking at the years of pension service during the marriage compared to the total military service of the member. The first divided by the second is called the "marital fraction." In most states (but not all), the court would likely award Mrs. Smith 50% times the marital fraction times Bill's final retired pay.

Q: Is there a limit on how much can be awarded through DFAS?

A: Yes. USFSPA states that no more than half of the pension, under most circumstances, can be divided. Many states presume an equal division of all marital property, including retirement rights.

Q: What happens if the judge awards Hilda more than 50% of my pension?

A: If this happens, DFAS cannot help. The limit for DFAS when the pension is divided as property is 50%. The Act makes it clear, however, that Hilda is not barred from taking action directly against her former husband through the courts for amounts in excess of 50 percent of his disposable retired pay.

Q: What are the key aspects of USFSPA regarding Reserve and Guard pensions?

A: There are two key considerations in dividing Guard/Reserve retirement rights. First, because Reservists do not usually begin to get retirement pay until age 60 (regardless of when they stop drilling), this deferral of payment must be taken into account in the negotiations and the present value calculations. Second, the "marital fraction" should be computed twice - once using marital years of service over total years of service, and then again using marital retirement points over total retirement points - to determine which calculation will best benefit the member or spouse.

To see what a difference this might make, let's take Major Smith's case. With five years of active duty and nine years of service in the Army Reserve (the marriage occurred when he left active duty), here's how the numbers work out –

To calculate the marital fraction using points, start by counting the points he acquired during active duty by multiplying 5 times 364 to get 1,820 points.

Then count his Reserve points: during his time in the Army Reserve, assume he acquired 60 points a year (for weekend drill, annual training and membership) for 9 years, or 540 points. Thus, his total points at 14 years of combined service are 2,360 [1,820 + 540], of which 540 (or about 23 percent) are marital. This should mean that 23 percent of his retirement pay (assuming retirement and date of separation both occur at year 20) is marital.

If we apply the marital fraction using years to his retirement pay, however, then his pension is 9/14 (or 64 percent) marital.

What a difference! Recognition of these two ways of calculating the marital benefit and the difference when Major Smith's pension is calculated are essential to competent representation in the Guard/Reserve pension case. Once again, the federal statutes do not tell what to do, what fraction to use, or what results to expect. This is state-law territory, not something set out in USFSPA.

Q: What if, after the divorce, my ex-wife gets remarried. Do her pension benefits terminate?

A: The pension payments do not, unless there is some unique clause in the divorce decree or settlement document which imposes this. There is nothing in federal law that requires the termination.

Q: What if I retire with a service-connected disability? Does that change the game at all?

A: It does indeed. The payment of VA disability compensation, if less than at a 50% rating, means a dollar-for-dollar reduction of Bill's disposable retired pay, thus lowering the amount that Hilda gets as a general rule. Hilda could avoid this with a reimbursement clause in her settlement document. If state law allows it, the judge could also order Bill, for any post- divorce reductions due to disability, to indemnify Hilda and pay her the difference.⁴

Q: Are there any civilian agencies available to help me, or to help my spouse?

A: EX-POSE is an organization that has been lobbying Congress for increased military benefits for former spouses of military personnel and military retirees. EX-POSE can be reached at 703-

⁴A judge in a contested case, however, cannot impose an indemnification requirement or “savings clause.” See Mark E. Sullivan, *Just for Judges – The Death of Indemnification*, Legal Assistance for Military Personnel, <https://www.nclamp.gov/for-lawyers/additional-resources/just-for-judges-the-death-of-indemnification/> (revised May 20, 2017).

941-5844 or Post Office Box 11191, Alexandria, Va. 22312. The website is www.ex-pose.org. The American Retirees Association (ARA) is an organization that serves divorced military members – active duty, Reserve, Guard and retired. ARA can be reached at PO Box 2333, Redlands, CA 92373-0781, telephone 909-557-0107 or 703-527-3065. The website is: www.americanretirees.org. ARA has also published a book, *Divorce and the Military II*, that has in-depth coverage of most of the issues discussed here.

Q: This is so complicated! I can't find a civilian attorney who knows anything about USFSPA and military pension division. How can I get a good, competent lawyer to help me?

A: There are many military cases where rights and advantages have been lost because of the attorney's lack of knowledge on the subject matter. As a practical matter, there are very few attorneys in any given state (and even fewer overseas) who know much about this little-known corner of the law and the division of military retirement benefits. And because you only get one chance to do it right, it makes sense to find the right lawyer right off the bat! Here are a couple of tips to help you:

- Ask a friend who's been through this already; if he/she has had a good attorney, this kind of word-of-mouth advertising may help you hook up with the right attorney.
- If you already have a lawyer, ask how much experience he/she has in the area of military pension division. A good lawyer should never hesitate to answer a question like this; an honest attorney will not flinch at giving you a straightforward answer. Be careful if your lawyer is "offended" or becomes defensive.
- If you're generally satisfied with your current lawyer but he/she needs some help, don't hesitate to suggest that another attorney be hired to act as co-counsel in the area of USFSPA and military pension division. The code of ethics in virtually every state requires attorneys to be competent in the area in which they practice or else to bring on board competent co-counsel. Maybe if your lawyer has a "silent partner" to help out when the going gets rough, your case will be settled (or tried) more effectively and fairly.
- Try to get a Reservist who practices in the field of family law as your attorney. Members of the Reserves are frequently the ones who are the most "up to speed" on current law and regulations in this area.
- Find out from the state bar or bar association if there are "certified specialists" in family law in your state. A majority of states have "specialty" designations for lawyers that concentrate their practices in a particular field, and these lawyers (although charging a premium for their services) will be more likely to be able to handle your case competently.
- Contact the family law section of your state's bar association or the American Bar Association to see if they can recommend attorneys who have spoken or written in the area of military divorce law

You can also find a helpful **LEGAL EAGLE** info-letter on how to find a good military divorce attorney at www.nclamp.gov, the website of the North Carolina State Bar's military committee.

Basics of SBP upon Divorce

Questions often arise when a member of the Guard or Reserve must confront allocation of the Survivor Benefit Plan (SBP) in divorce proceedings. To see what happens, let's sit down with MAJ Bill Smith, who has five years of active-duty service and nine years of service in the Army Reserve. He married when he left active duty. He has been sued for divorce by Hilda Smith, his wife, and wants to know about SBP options. Here are some oft-asked questions (with answers provided) about the Survivor Benefit Plan which might help him decide what to do.

Q: If I die, what happens to the pension division award?

A: Under USFSPA, your rights (or those of your wife) to a portion of military retired pay end upon your death. Payments cannot be made to her estate, survivors, or heirs.

Q: Is there any way that pension payments can continue after my death?

A: Yes. Federal law states that, in the event the service member dies, the person receiving the award shall receive no further benefits unless the member elected the Survivor Benefit Plan (SBP). Payments will continue if SBP coverage has been chosen (but not necessarily in the amount of payments under USFSPA). The court can order a spouse to provide SBP coverage for the non-service spouse. The SBP coverage must be ordered by a U.S. court, not the court of a foreign country.

Q: Give me a refresher course. What is SBP and how does it work?

A: SBP is an annuity paid to the surviving spouse or family member of a deceased servicemember. It's similar to insurance in that it enables retired military personnel to provide funds to beneficiaries after the retiree's death. The beneficiary of Bill Smith's SBP can be his wife (or former wife), his dependent children, or any other person with an insurable interest as to his life.

Q: How do you decide the amount your beneficiaries will get?

A: To determine how much the beneficiary will receive, you must first designate a "base amount." The minimum base amount is \$300 per month, but you can select any greater amount up to the full monthly amount of your retired pay.

Q: What's next?

A: The annuity pays 55% of the designated base amount at the time of the servicemember's death. The cost depends on who your beneficiary is and what base amount you select. Former spouse coverage, for example, costs 6.5% of the selected base amount. The annuity cost is deducted from your gross retired pay.

Q: Do I have to sign up? Or do I have a choice?

A: SBP participation is optional, but there are some conditions. A servicemember who is on active duty and married cannot reject full spousal SBP coverage without the spouse's consent. If you are married and on active duty, you must make your SBP election at the time that you retire. If you elect to participate, you cannot cancel the SBP coverage later, except under very limited circumstances. If you decline to participate, this decision is irrevocable.

Q: What if the RC member is not on active duty now, and is about to retire. How does the Reserve Component Survivor Benefit Plan work?

A: RCSBP requires that certain elections must be made, and these are set out in the "20- year letter." In general, the rule is that a member of the Guard/Reserve must elect the maximum coverage for the spouse unless the spouse consents to a lesser amount.

Q: When do I have to decide?

A: Guard/Reserve members have two chances to select SBP coverage. Your first chance is when you have completed 20 years of creditable service. The second is when you turn 60. However, if you elect to participate at the 20-year point, you cannot disenroll at age 60.

Q: What choices do I have at the 20-year mark?

A: You can accept coverage starting immediately, which might be called "immediate decision, immediate coverage." You can accept coverage but defer payment until you would have reached age 60, should you die before then; this might be called "immediate decision, deferred coverage." Or you can defer the decision till age 60. Spousal concurrence is required for both of the latter decisions.

Q: Who can be my beneficiary?

A: You are only allowed one adult SBP beneficiary. You can't reserve part for a present or future spouse and part for a former spouse. Multiple beneficiaries are only permitted if you choose "child coverage" and there is more than one child, or "spouse and child coverage."

Q: So is SBP really a good deal?

A: SBP is generally a good plan, but there are some situations in which it may not be the most economical plan. For example, the minimum SBP plan premium for \$300 per month as the base amount is cheaper than almost every private insurance program. But at larger amounts, SBP coverage may be more expensive than commercial insurance. Also, if you're going through a divorce and the SBP has not been designated for your soon-to-be-ex, consider "saving" the SBP for a future spouse if your soon-to-be former spouse is likely to remarry before 55, thus losing eligibility for coverage.

Commercial life insurance or a private annuity may also provide better or cheaper protection for a younger surviving spouse. But SBP is a lifetime annuity and it'll never become "too expensive," as might be the case with life insurance. For better comparison information on life insurance, check with an insurance agent who is familiar with the costs and benefits of SBP, such as a military retiree or an agent who is in the Reserves or the National Guard. The bottom line here is, "Shop around!"

Q: If I elect SBP for Hilda – or it she's awarded SBP coverage by the court –does it continue if she remarries?

A: No. SBP coverage is suspended for her if she remarries before age 55. If that remarriage is later terminated by divorce, death or annulment, the SBP is reinstated.

Q: Can Hilda waive SBP coverage?

A: Yes, but her waiver will only be effective if it is done before a notary. Once she has waived SBP coverage, in general it's gone and cannot be reinstated for her, absent proof of fraud, coercion or duress. The one exception here is if there is an Open Season on SBP enrollment which allows anyone who has declined coverage in the past to sign up. The last open season was pursuant to a law that Congress passed in 2005, providing for such an enrollment window for one year beginning October 1, 2005.

Q: What are the deadlines for submitting SBP orders to DFAS?

A: There are two different deadlines. If the retiree or servicemember submits the order to DFAS, it must be sent within one year of the divorce. When the spouse/former spouse sends it in, the deadline is one year from the date when SBP coverage is ordered.

Q: Why is it that you have to send DFAS an order for coverage? If Hilda Smith was named as the beneficiary before the divorce, she's still "Hilda Smith" after the divorce, so she ought to be the beneficiary then too!

A: It's not quite so simple. You see, SBP coverage goes by title, not by name. She's the "former spouse" after the divorce; her "spouse coverage" runs out when the judge brings down the hammer and grants the divorce. So you can say "Hilda Smith" a dozen times in the divorce decree as designated beneficiary for SBP, but she still loses coverage when she's divorce unless the court order grants her former spouse coverage.

Q: So once the divorce decree grants former spouse coverage to her, that's it? No further action is required?

A: Not so fast! Simply stating that Hilda is the former spouse beneficiary for SBP is like only getting to first base. You need to go a little farther along to accomplish a home run. Similarly, in the world of SBP and divorce, you need to take that divorce decree or court order for SBP and

send it to DFAS so that it will be honored if Bill Smith dies first. This needs to be done with DD Form 2656-10 if it's a deemed election, and DD Form 2656-1 if the member elects coverage.

Q: Whoa! Slow down – what are these elections that you're talking about?

A: Choosing SBP coverage for a former spouse can be done by Major Bill Smith, the RC member. This is called an election. His deadline to send the packet in to DFAS is one year from the date of the divorce. If, however, he refuses or is unable to make this election, then the former spouse can use the court order which grants her coverage to make a deemed election. The deemed election means that the member or retiree is “deemed to have made the election” by virtue of the court order. When a deemed election is made, it must be done within one year of the order granting SBP coverage to the former spouse. In other words, just getting SBP ordered at the courthouse is not enough. If DFAS doesn’t get a copy on time, then the court-ordered former spouse coverage will not be effective.

Q: What if I were to get remarried? Can't I let my new wife have SBP coverage? Even if I can't give her the whole thing, can't SBP be split between my wife and my ex-wife?

A: Sorry, but the Survivor Benefit Plan is a unitary benefit. There can be only one adult beneficiary. It cannot be divided between successive spouses. Of course, if SBP is not covered in the divorce, then it can be preserved for “the next Mrs. Smith,” but that’s up to the judge. There is, by the way, no federal requirement that SBP go to the wife or ex-wife of Bill Smith in a divorce case. While federal law allows the judge to do this allocation, it’s purely a matter of state law whether this should be done in regard to the divorce.

Q: What if COL Roberts wants his ex-wife to pay the SBP premium since it's for her benefit?

A: The premiums are divided between the parties because USFSPA requires that the premium come off the top before division of disposable retirement pay. Thus they are shared in proportion to the share of the pension that each one receives. For example, if Mrs. Smith is awarded 30% of the military pension, then she’ll be paying 30% of the premium.

Q: You mean there's no way to have her pay the premiums?

A: Not quite. While you cannot order DFAS to “have her pay the premiums,” if the parties agree (or the court requires), the percentage of the pension she receives can be lowered so that, in effect, she is picking up the entire tab on the premiums. So, for example, if she were receiving 30% of the pension and the judge ordered that her share be re-adjusted to transfer to her the full cost of the premium for SBP, then the court might order her share to be lowered to 25.13% so as to shift the premium cost to her.

Q: Sounds difficult.

A: It is. It cannot be done while the member is still serving, since the numbers necessary to insert into the calculation are not yet known, such as his retired pay. Calculations can be done when the member is “in pay status,” meaning the pension check is arriving monthly, but it takes several steps in the math to accomplish the intended result. Most lawyers haven’t a clue on how to do it!

Q: What about the benefit that Hilda gets in divorce? Can the judge adjust that so that it mirrors the money she gets in pension division?

A: Yes, but this is not required by federal law; it’s purely a question of state rules, state procedures in divorce. Let’s outline the problem and a possible solution:

- The base amount determines the monthly payment after Bill Smith dies.
- If no base amount is mentioned in the order or decree, DFAS will automatically make Bill’s full retired pay the base amount.
- This means that Hilda, who is only getting 30% of Bill’s retired pay as her monthly share during his life, will jump up to 55% of his retired pay at his death, if he dies first.
- If the judge finds that it would be unjust for Hilda to receive such a windfall, the only way to change the result is to lower the base amount. Thus, for example, if Bill were retired when the divorce occurred, the judge could select a lower base amount (down to \$300 a month) to yield a monthly SBP payment to Hilda which would match her pension share during Bill’s life. This is sometimes called a “mirror benefit.” The monthly pension share of Hilda divided by .55 yields the proper base amount. Thus, if her monthly pension payment is \$550, then \$1000 is the base amount that you’d select to get her SBP monthly amount to match the pension payment she receives during Bill’s lifetime.

Note that it is impossible to do the calculation when the retirement has not occurred yet. We just don’t have the numbers needed to perform the computation.

It is also complicated by the circumstances of the case. What if Bill divorces before he retires and the judge did not preserve this option in the decree? What if retirement occurs before the divorce and he’s selected “full coverage” for Hilda already?

The best solution for Bill is to consult with an SBP counselor, a person from the Retirement Services Office at a nearby base, or an attorney with expertise in military pension division, so that he can make an informed decision. And, as always, “The earlier, the better!”

Q: Can you give me a chart which will explain some of this clearly?

A: This attorney checklist will help to explain the SBP and coverage for the non-military spouse.

Action or issue	Comments
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SBP is a unitary benefit, cannot be divided between current spouse and former spouse	
Election: Servicemember on active duty is automatically covered; at retirement an election must be made, and spouse concurrence is necessary if member chooses no SBP, child only coverage or coverage at base amount less than his/her full retired pay.	
Election: Guard/Reserve: There is one opportunity to make election at the 20-year mark (after 20 years of creditable Guard/Reserve service). At time of application for retired pay (about a year before member turns 60), he/she is given another opportunity. Spouse concurrence as above.	
If representing the nonmilitary spouse, be sure to mandate former spouse coverage with member selecting full retired pay as base amount.	SBP benefit payments equal 55% of the selected base amount, which can be from \$300 up to the full retired pay.
If representing the member/retiree, make sure that the base amount selected yields an SBP payment not to exceed the amount of retired pay awarded to the former spouse, so that spouse doesn't profit by retiree's death	Selection of a base amount lower than full retired pay means that the death benefit payments from SBP can be about the same as the lifetime spousal payment. This "mirror benefit" approach may be very difficult to calculate before retirement, depending on what the rules of pension division are in the state involved
If representing the member/retiree, try to negotiate a reduction of the spouse's share of the military pension to reflect the	For former spouse coverage, SBP premium is 6.5% of selected base amount, payable out of retired pay, and it is "taken off the top" and deducted before division of disposable retired pay, so the default is that both parties pay in

additional cost of the SBP premium, which is taken out of the retired pay.	same shares as their respective shares of the retired pay.
If member/retiree is to submit SBP election to DFAS, make sure this is done within one year of divorce; enclose divorce decree and SBP application form titled Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage (DD Form 2656-1).	Use DD Form 2656-10 for deemed election request.
If above deadlines are exceeded, apply to the appropriate Board for the Correction of Military Records for relief. Deadline in most cases is 3 years from discovery of problems. Relief may be available if retiree has not remarried, or if new spouse consents.	
Send SBP documents to: Defense Finance and Accounting Service, U.S. Military Retirement Pay, P.O. Box 7130, London, KY 40742-7130. (if retired or in a pay status).	It is recommended to send by certified mail, return receipt requested. See DD Form 2656-10 for other addresses to use if not an active duty SM or a retiree already in a pay status.
SBP is reduced by Dependency and Indemnity Compensation in certain circumstances	

Military Medical Benefits in Divorce

Questions often arise when a member of the Guard or Reserve must confront medical care coverage and benefits in divorce proceedings. To see what happens, let's examine the case of MAJ Bill Smith, who has five years of active-duty service and nine years of service in the Army Reserve. He married when he left active duty. He has been sued for divorce by Hilda Smith, his wife, and wants to know about health care coverage for his wife. Here are some frequently asked questions (with answers provided) about medical benefits which might help him decide what to do.

Q: Besides division of retired pay and allocation of the Survivor Benefit Plan, what other benefits can Hilda receive upon divorce?

A: A spouse or a former spouse who meets certain requirements may be able to receive full or partial medical, dental, commissary and post exchange benefits.

Q: What is required for full medical benefits?

A: A spouse or former spouse can receive full benefits (including medical care on a space-available basis and CHAMPUS/TRICARE coverage) if he/she meets the "20/20/20 test." This three-part test requires that the spouse must have been married to the member for at least 20 years. The member must have performed at least 20 years of creditable service toward retirement. Finally, at least 20 years of the marriage must overlap at least 20 years of active service. All three parts of the test must be met.

Q: If a spouse doesn't meet the "20/20/20 test" for full benefits, are there other benefits available?

A: Yes. He/she may be able to receive permanent medical benefits if the divorce decree was final before 1 April 1985 and the spouse meets the "20/20/15 test." This requires that the parties must have been married for at least 20 years and the member must have performed at least 20 years of creditable service towards retirement. Finally, at least 15 years of the marriage must be during military service. Again, as with the "20/20/20 test," all parts of the test must be met.

Q: If a spouse meets the "20/20/15 test," but the divorce decree is final after 1 April 1985, is the spouse still eligible for some benefits?

A: Yes. The spouse is entitled to one year of transitional benefits, after which he/she has the right to convert to a private health plan set up by the Department of Defense. However, he/she must remain unmarried and not be covered under employer-sponsored medical coverage.

Q: Are there any other aspects of military benefits that I should know?

A: Yes, there are other aspects of military benefits to remember. Consider the following points:

- If the nonmilitary spouse for some reason loses eligibility to medical care, he/she may purchase a "conversion health policy" under the DoD Continued Health Care Benefit Program (CHCBP), a health insurance plan negotiated between the Secretary of Defense and a private insurer. This must ordinarily be purchased within the 60- day period beginning on the date that the former spouse ceases to meet the requirements for being considered a dependent. Upon purchase of this policy, the former spouse is entitled, upon request, to medical care until the date that is 36 months after (1) the date on which the final decree of divorce, dissolution or annulment occurs; or (2) the

date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) (for 20/20/15 spouses with divorce decrees on or after 1 April 1985) expires, whichever is later.

Premiums must be paid three months in advance; rates are set for two rate groups, individual and group, by the assistant secretary of defense (health affairs). CHCBP is not part of TRICARE. For further information on this program, contact a health benefits advisor at the nearest military medical- treatment facility, or contact the CHCBP Administrator, P.O. Box 1608, Rockville, Md. 20849-1608; telephone 1-800-809-6119.

- A former spouse may also obtain indefinite medical coverage through CHCBP (under 10 U.S. Code 1078a) if she or he meets certain conditions. The former spouse:
 1. Must be entitled to a share of the servicemember's pension or SBP coverage;
 2. May not be remarried before age 55;
 3. Must pay quarterly advance premiums; and
 4. Must meet certain deadlines for initial application.

Details about applying for this "CHCBP-indefinite" coverage may be found at <https://www.tricare.mil/chcbp>. The coverage is the same as that for federal employees, and the cost is the sum of the following: premium for a federal employee, plus premium paid by the federal agency, plus 10%. This amounts to less than \$350 per month as of 2009.

The following resources explain further the benefits and conditions involved in CHCBP:

- John Camp, *Former Spouse Health Care: The Continuation of Health Care benefits Program as a Long-Term Health Care Option for Former Military Spouses*, ABA FAMILY LAW SECTION, MILITARY LAW COMMITTEE, ROLL CALL (Summer Ed. 2008).
- Jessica Lynn Pyle, *The Continued Health Care Benefit Program: The Department of Defense's Guarantee of Lifetime Health Care to All Former Military Spouses*, 56 NAVAL L. REV. 199 (2008), <http://www.jag.navy.mil/documents/navylawreview/NLRVolume56.pdf>.

Q: Can a former spouse obtain dental care coverage? What if the divorce decree or court order required it?

A: The answer is NO. Except for certain abused spouses and former spouses, there is no 20-20-20 dental care available for a former spouse.

Q: What are the steps to take in obtaining benefits?

A: A former spouse who qualifies for any of these benefits may apply for an ID card at any military ID card facility. He or she will be required to complete DD Form 1172, "Application for Uniformed Services Identification and Privilege Card." The former spouse should be sure to take along a current and valid picture ID card (such as a driver's license), a copy of the marriage certificate, the court decree, a statement of the member's service (if available) and a statement

that he/she has not remarried and is not participating in an employer- sponsored health-care plan.

Q: Can these benefits be given or withheld by the judge in the divorce case? Can they be preserved if Hilda Smith has a savvy negotiator as her lawyer?

A: No. The benefits we have been discussing are statutory entitlements. They belong to the nonmilitary spouse if he/she meets the requirements as set out above. They are not terms that may be given or withheld by the judge or the Reserve Component member. Thus they should not ordinarily be part of the "give and take" of pension and property negotiations because the military member has no control over these spousal benefits.

The only control either party might have is in the date of the divorce, which marks the ending point of the first of these "20s"—the twenty necessary years of marriage. In some cases, it may be advisable for the nonmilitary spouse to drag his or her feet and delay the entry of a divorce judgment to extend the marriage to a full twenty years. Ordinarily, the SM should *want* to extend the marriage as well, since it will relieve him or her of substantial financial burdens in providing for a portion of the former spouse's financial support, should that be part of the settlement or decree.