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Am I Stuck with my “Domicile” in Puerto Rico?

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Q: I am a First-Class Midshipman (senior) at the United States Naval Academy (USNA) in Annapolis, Maryland. I was born in 1995 in Puerto Rico. I never left the island until 2013, when I graduated from high school and a few days later reported to the USNA for Plebe Summer. In May of this year, I will graduate and will be commissioned an Ensign in the Navy. Sometime in the summer or fall, I will report to a Navy base in Florida for pilot training.

In September, I inquired about registering to vote and voting in the presidential election. A Navy lawyer told me that I was ineligible to vote in the presidential election because I am

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. I am the author of more than 1800 of the articles.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

“domiciled” in Puerto Rico. What does that mean? Is my Puerto Rico domicile something that I can change?

Answer Bottom Line Up Front:

You are a citizen of the United States, and you are eligible to vote for federal, state, territorial, and local offices in the place where you are domiciled (not necessarily where you physically reside). Your domicile is your legal residence and may be different from your physical residence (where you usually sleep). You can change your domicile while you are on active duty, as I will explain in detail.

Explanation:

The United States Constitution provides: “All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.”³ Puerto Rico is part of the United States, although it is not a state, and you are a citizen of the United States by birth, just as much as if you had been born in Kansas.

Like the United States Virgin Islands and Guam, the Commonwealth of Puerto Rico is a territory, not a state. Puerto Rico has a non-voting delegate (called a “Resident Commissioner”) in the United States House of Representatives and is not represented in the United States Senate or in the Electoral College that elects our President. Like other Puerto Rico domiciliaries, you are eligible to vote for territorial and local offices and for the Resident Commissioner position.

Every human being (including every service member) has one and only one domicile—legal residence. A person can own or rent multiple physical residences (places to sleep), but only one place qualifies as the person’s domicile. Daddy Warbucks can afford to purchase and furnish 365 houses and to spend one night per year in each house, but he still has only one domicile, and he is still entitled to only one vote.

For a civilian (a person not presently on active duty), the place where the person usually sleeps is his or her domicile, unless he or she is there for only a temporary purpose.⁴ Under a federal statute called the Servicemembers Civil Relief Act (SCRA), an active duty member of one of the seven uniformed services⁵ is treated differently from a civilian in the determination of his or her

³U.S. CONST. amend XIV, § 1.

⁴If a civilian is away from his or her home in State A for a three-month job assignment in State B, that temporary absence from State A and presence in State B does not cause the person to lose the domicile in State A or to gain a domicile in State B.

⁵The uniformed service include five armed forces (navy, Marine Corps, Army, Air Force, and Coast Guard) plus the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration. 10 U.S.C. § 101(a)(5).

domicile. It is entirely fair and appropriate to treat service members differently because, unlike a civilian, a service member does not get to choose where to live.⁶

Your domicile of origin is in Puerto Rico, at the place where you lived with your parents just before you reported to the USNA in 2013.⁷ You can maintain your domicile of origin at that address in Puerto Rico until you leave active duty, even if you remain for a full career of 20 years or more. You can change your domicile while on active duty, but doing so requires a conscious act on your part—it does not happen automatically.

To change your domicile while on active duty, you must have two things *simultaneously*—*a physical presence in the state to which you wish to change, for a significant time, and the intent to make that place your home*. Neither intent alone nor physical presence or absence alone is sufficient to create a new domicile or to destroy an existing domicile.

When you get to your new duty station in Florida, that would be a good time to establish a domicile in Florida, because Florida is one of only seven states that has no state income tax.⁸ To change your domicile to Florida while serving there for at least several months,⁹ you need to have the *intent* to make Florida your home, and you need to show evidence of that intent. Registering to vote in Florida and voting in elections held during your Florida assignment is perhaps the best way to show evidence of your intent to make that state your home.

The SCRA prohibits the state where you live pursuant to military orders from taxing your military income, unless that state is your domicile.¹⁰ If the Navy assigns you to a base in State A, you must rent an apartment or buy a house somewhere within a reasonable commuting distance of your assignment. Doing so does not make you a domiciliary of State A, and State A is prohibited from taxing your military income in this situation.¹¹

If you make a bona fide change of your domicile from Puerto Rico to Florida *while stationed in Florida for a significant time*, you can maintain your Florida domicile until you leave active duty, even if you remain for 20 years or more. To maintain your Florida domicile, you need to continue voting in Florida by absentee ballot while serving in other states, while serving at sea,

⁶A civilian could be transferred from State A to State B by his or her employer, but the civilian can always quit if he or she does not want to move. The service member cannot quit, at least not until the end of his or her period of active obligated service. If the Navy assigns you to duty in Florida and you refuse to go, you are guilty of the military criminal offense of unauthorized absence.

⁷The Place where you lived is your domicile of origin, even if your parents have since moved away or passed away. Now that you are an adult, the domicile of your parents no longer controls your domicile.

⁸The other eight states are Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming.

⁹You cannot change your domicile to Florida while spending a weekend in the BOQ or a two-week Temporary Additional Duty assignment.

¹⁰50 U.S.C. § 4001(a).

¹¹*Id.* § 3911(2)(B).

and while serving at military installations outside our country. You must not vote or register to vote in a state where you are serving, if you want to maintain your Florida domicile.¹²

For example, let us say that in 2026 you are still on active duty and serving at NAS Oceana in Virginia. You register to vote at your apartment in Virginia Beach because you find voting in person to be more convenient than voting absentee. If you do that, you just became a Virginia domiciliary, and you lose the SCRA protection, meaning that Virginia can tax your military income.

You have only one domicile, for all legal purposes. You cannot be a Virginian for voting purposes but a Floridian for tax purposes. You cannot have it both ways. Maryland's high court has held: "Evidence that a person registered or voted is admissible and ordinarily persuasive when the question of domicile is at issue."¹³

Comparing the tax policies among the states is an important consideration in deciding where you want to establish your domicile, when you can change it, but this is not the only consideration. If you become a Florida domiciliary, you become subject to Florida law on many important legal questions, including what happens to your property if you marry and then divorce.

The Uniformed Services Former Spouse Protection Act (USFSPA) is the 1983 federal statute that permits but does not require the states to divide military retired pay as marital property in divorce lawsuits. There is considerable variation among the states in the legal theories and formulas, but all 50 states, the District of Columbia, the United States Virgin Islands, and Guam all divide military retired pay as marital property. Among United States jurisdictions, only Puerto Rico does not divide military retired pay.¹⁴

The bottom line is that you have one and only one domicile, and you need to keep all your incidents of domicile (where you vote, where you pay state taxes, where you have a driver's license, where you have title to your vehicle, etc.) in that one state. If you are uncertain about your domicile, you need to make an appointment with a military legal assistance attorney to discuss this issue in detail.

¹²Please see Law Review 15076 (September 2015).

¹³*Comptroller of the Treasury v. Lenderking*, 303 A.2d 402, 405 (Md. 1976).

¹⁴As you probably know from your history class, Puerto Rico was a colony of Spain until the end of the 19th century, so Puerto Rico law is very different from the law of each of the 50 states.