

LAPTOP TELECONFERENCE:

Domestic Violence in the Military II: Family Law Litigation

Thursday, January 26, 2006, from 1-3 pm EST

Military Divorces: Maintaining Benefits, How to Avoid Malpractice

1. **How long has your client been married to the servicemember? How long has the servicemember been on active duty? What is the overlap between these two numbers?**

- a. **Medical Benefits [20-20-20].** If the servicemember is approaching 20 years of service and your client has been married for the entire time—DO NOT SCHEDULE THE DIVORCE HEARING. Look at ways to prolong the process until the 20-20-20 requirement is met. If your client has been married to the servicemember at least 20 years, AND the servicemember has been on active duty service for at least 20 years AND the marriage and the active duty service have a 20 year overlap, your client will have medical benefits after the divorce.

If you cannot avoid the divorce hearing, this is an issue which can be raised at trial requesting a delay for entry of the final order or in the alternative that the servicemember be required to compensate the client for taking away the medical benefits. If your state allows for a legal separation for this period of time, the military will count the time during the legal separation as “married” time.

- b. **Pension Entitlement [10-10-10]** If the servicemember is approaching 10 years of service and your client has been married for the entire time—you may want to postpone the hearing. Unless your client meets the 10-10-10 requirement (ten years active duty service AND ten years of marriage AND ten years of overlap) the military will not pay directly to your client any portion of the pension awarded to your client as marital property. *NOTE: there is no 10-10-10 requirement to be eligible for a portion of the pension—this is a matter of state law. The 10-10-10 requirement only applies to receiving a direct payment from the Finance Center.*

2. **If the servicemember is retired and getting a pension, do not assume that your client will automatically get the survivor’s benefit if the servicemember dies.**

Many retirees choose to pay for the Survivor Benefit Plan. This is an annuity purchased by the retiree and there is a payroll deduction from the pension which pays for the annuity. The Survivor Benefit Plan pays the beneficiary 55% of the pension. Under current law, there was an offset for social security when the annuitant reached age 62

which reduced the benefit to 35%. As of October 2005 that reduction is changed, and the annuitant will receive a higher benefit. The higher benefit is being phased in over a period of time (see newsletter which is part of the sent materials).

If the divorce decree does not “deem” the ex-spouse as the beneficiary of the Survivor Benefit Plan, your client will automatically be taken off the plan as the beneficiary. If you do not put this in the final decree, you have up to one year from the date of the divorce to get the court order.

For all matters concerning military pay, child support and alimony payments, and division of military pensions, this is the website to know:

<http://www.dod.mil/dfas/money/garnish/>