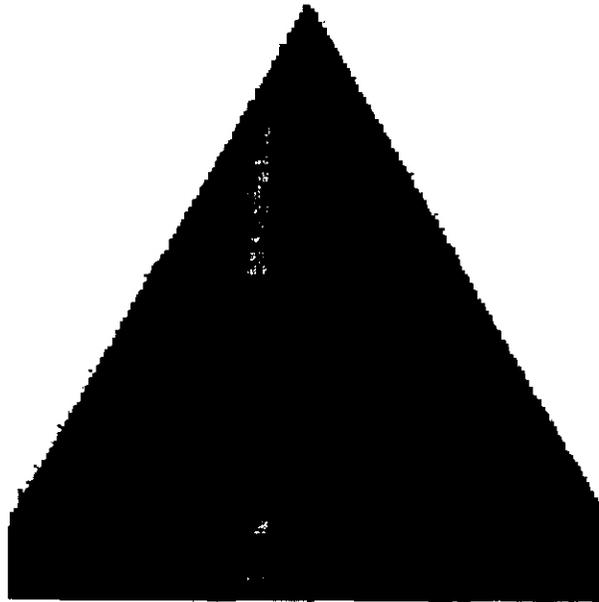


Family Law Brief

for

**FORT KNOX SOLDIERS, DEPENDENT
FAMILY MEMBERS, AND MILITARY
RETIREES:**



From the Fort Knox Legal Assistance Office
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INTRODUCTION

Welcome to the Fort Knox family law briefing. The purpose of your family law briefing is to provide preliminary information on the issues you should be thinking about if you are experiencing problems with your marriage or family situation. As you may know, Army attorneys cannot appear in civilian court with you. We can, however, provide general guidance about divorce, separation, the payment of support, and other issues which you will need to think about before hiring a civilian attorney to represent you and before you get to court.

As a part of your family law briefing, you will receive a comprehensive information packet, which discusses the major issues you will need to think about. The packet is very thorough and will answer most, if not all, of your questions. The packet includes information concerning:

- ❖ *Kentucky Divorce Law* (it details Kentucky's requirements to have one of its courts hear your divorce action. Information papers for several of our surrounding states (Illinois, Indiana, Michigan, Ohio, and West Virginia) are also available if needed);
- ❖ *Support of Dependents* (it details a soldier's obligations to provide support for their family members under the Army's interim support requirements (Army Regulation 608-99 requires payment of support in the absence of a Court order or separation agreement specifying a different amount));
- ❖ *Uniformed Services Former Spouses' Protection Act* (it explains the federal law that allows states to divide military retired pay as marital property. It also details benefits to which former spouses may be entitled);
- ❖ *Preparing for Divorce Court* (it covers some general guidelines for finding an attorney and some of the things that should be taken into consideration before hiring an attorney);
- ❖ *BAH II* chart for year 2001 (it lists the amount of support, based on pay grade, that soldiers are required to provide under the Army's interim support requirements);
- ❖ *a local civilian attorney referral list* (it contains names, office locations, and telephone numbers for local attorneys (mostly in Radcliff and Elizabethtown) qualified to handle your case).

If you are a dependent family member and you are currently separated from your sponsor, and you are not receiving support (as required by a court order, separation agreement or under the Army interim support requirements), we can schedule you for an appointment following the briefing. During the appointment we can discuss your non-support situation to determine an appropriate course of action.

As stated above, our office's family law mission is to provide initial information and preliminary guidance. **This information is not intended as a substitute for competent legal counsel.** Therefore, you should consult an attorney, rather than use this guide as a tool to act as your own attorney.

KENTUCKY DIVORCE LAW

GROUND FOR DIVORCE

Kentucky has a “no fault” divorce law, which means it is not necessary to show grounds for dissolution of the marriage based on the wrongdoing or marital misconduct of one of the husband or wife. The basis for divorce is the irretrievable breakdown of the marriage, or the parties to the marriage cannot continue to live together as husband and wife and there is no reasonable prospect for reconciliation.

DIVORCE PROCEDURES

- ❖ *Must Reside in Kentucky for 180 Days.* One of the parties must be a resident of Kentucky for at least 180 days before filing the petition for divorce (K.R.S. 403.140(a)). “Residency” means physical presence in Kentucky. A soldier who has been stationed at Fort Knox for 180 days satisfies this requirement, even though his home of record is in another state. If you established residence in Kentucky in the past, and have been temporarily absent from the state, you may be able to file for divorce based upon your prior residency.
- ❖ *Filing the Petition for Divorce.* To apply for a divorce, a petition is filed in the circuit court of the county where the husband or wife usually reside. The other party then has 20 days to respond to the petition or a judgment by default may be entered by the judge. The divorce will be finalized after hearing evidence which may require the parties to have to testify in court. If the other party is contesting or objecting to any aspect of the divorce, such as alimony, child custody or support, division of property, etc., they will appear before the judge and argue their side of the case.
- ❖ *Final Judgment.* If there are minor children, the law requires a 60 day waiting period before the divorce can be finalized (K.R.S. 403.044). Also, the parties must have been separated at least 60 days before the divorce can be finalized (K.R.S. 403.170(1)). This 60 day separation period can include living in the same house so long as they do not have sexual relations and can include a period of separation which occurred prior to filing the divorce petition. Once these waiting periods have expired and the judge has decided all the disputed questions, he will sign a final judgment, and the divorce will be finalized.

The above procedures may vary. For example, the evidence may be submitted as written depositions from the parties so that a personal appearance is not required, or the judge may refer an uncontested case to a special commissioner.

DIVORCE ISSUES

The rights and responsibilities that the husband and wife have toward each other will be resolved during the divorce. If the parties can agree, then these issues can be listed in a separation agreement to be made part of the final divorce decree. If the parties cannot agree, then the judge will decide whether the marriage is to be dissolved and how alimony or maintenance, child custody, child support, and division of property are to be handled.

- ❖ *Irretrievable Breakdown.* The allegation that the marriage is irretrievably broken must be proved. This, however, is normally not a significant issue in a divorce and is usually shown by an affidavit.
- ❖ *Alimony or Maintenance.* Kentucky uses the term “maintenance” in lieu of alimony or spousal support, and either spouse may be obligated to support the other. Maintenance may be awarded while the divorce is pending and after it is final. Permanent maintenance for a spouse can be awarded only if the court first finds the spouse seeking maintenance lacks sufficient property to provide for their reasonable needs and is unable to support himself/herself through appropriate employment.

If the court overcomes this hurdle in favor of the spouse seeking maintenance, it will then examine the financial resources of the party seeking maintenance and his/her ability to seek training or obtain appropriate employment, the standard of living during the marriage, duration of the marriage, age and physical or emotional condition of the spouse seeking maintenance, and the ability of the paying spouse to meet his/her needs while meeting those of the spouse seeking maintenance.

The burden is on the spouse seeking maintenance to convince the court of his or her need. As a practical matter, it is difficult to get maintenance unless the marriage is very long and the spouse has no other source of income. Even though fault or marital misconduct is no longer a relevant factor in granting a divorce, fault is relevant upon the issue of maintenance. In Kentucky fault can be considered so that a spouse entirely at fault may be denied maintenance.

- ❖ *Child Custody and Support.* Either parent may be awarded custody of minor children. The decision is based upon the “best interests” of the children - the child’s physical, mental, moral and spiritual well being (K.R.S. 403.270(2)). Factors considered by the judge include the relative stability of the father’s and mother’s respective households, the wishes of the parents, any *de facto* custodian, the preferences of the child, each parent’s fitness as a parent, and the health of all concerned. However, the court has wide discretion in hearing proof

regarding any matter that may have an impact on the future well-being of the children with the proposed custodian. Although Kentucky is a No-Fault State, "fault" relating to the dissolution may be relevant in contested custody cases.

There is no "tender years preference for the mother" in Kentucky law. Rather, both parents are presumed to be fit and proper custodians of their children. The parent who will take custody of the child is the one whose care would be in the best interests of the child.

Prior to the entry of a Final Decree when there are children of the marriage, the parents must attend a Parent Education Clinic. The cost is minimal and the workshop lasts 2 hours.

Joint Custody. Parties may agree to share custody of their children, if it is in the child's best interests (K.R.S. 403.270(5)). As opposed to permanent custody of all children to one party, joint custody arrangements permit joint parental control over matters important to the development and upbringing of the children. However, the court may deny a request for joint custody if it appears the parties cannot cooperate in arranging for their children's development. Joint custody appears to be the judicial preference in recent appellate opinions.

Visitation. Visitation rights to the non-custodial parent need not be specific, but if the parties anticipate disagreement over times for visitation, it is probably wise to set forth a specific visitation schedule. Unless there is a serious danger to the child, the non-custodial parent is entitled to reasonable visitation rights. Grandparents may intervene in the action, in some cases, to enforce their visitation rights as well.

Child Support. Kentucky has adopted the Uniform Child Support Guidelines, found in the Kentucky Revised Statutes 403.212(6). These are to be applied in every case as a *rebuttable presumption*, and can be reversed only with evidence of extraordinary circumstances. Parties may read the Child Support Guidelines, plug in the appropriate amounts, and determine child support on their own. If you desire to significantly depart from the support guidelines, both parties must represent to the court that they are aware of the calculated amount of support under the guidelines, but nevertheless, desire to deviate from the guidelines.

Generally, there is a better chance of receiving child support than alimony (maintenance). The courts almost always award child support and will consider the number of children requiring support. To determine the amount of support, the court will consider the following factors: the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had the marriage not been terminated; the physical and emotional condition of the child; and the educational needs of the child.

Many soldiers believe the only support they owe is an amount equal to their basic allowance for quarters (BAQ) at the with dependent rate. This is not entirely accurate. Army regulations provide that in the absence of a court order or separation agreement specifying support, the soldier is required to provide interim financial support in an amount equal to BAQ at the with dependent rate to his family members. This amount may then be pro rated among his family members. The Army's formula is not intended to be a substitute for the court's decision regarding child support, and the court's actual decision regarding child support could be greater or lesser than what the Army requires as a temporary measure.

SSI benefits for a child may be deducted from the non-custodial parent's support obligation. Parties may agree to future automatic increases in child support. Alternatively, a modification may be requested based on an increase of salary.

- ❖ *Division of Property.* Kentucky follows the rule that each spouse is entitled to keep their separate property which was acquired by them before the marriage, but there will be an equitable distribution of their marital property (K.R.S. 403.190(2-3)). However, interest accrued during the marriage on non-marital property may be considered marital property. Marital property includes property which was acquired after the husband and wife were married. This means the court will divide the marital property, without regard to fault or marital misconduct, in "just proportions", taking into consideration the length of the marriage, the spouse's contributions to the marriage to include the contribution of a spouse as homemaker, the value of the property, and the economic circumstances of each spouse. This does not mean that all property must be divided 50/50, or evenly. Kentucky is not one of the nine "community property" states, such as California or Texas.

The court will also consider the desirability of awarding the family home or the right to live there for a reasonable period to the spouse having custody of the children.

The division of property will include personal property such as household goods, automobiles, and bank accounts, as well as real estate. Liabilities such as loans and bills will be considered in the equitable distribution. A soldier's military retirement pension is considered marital property even if the soldier has not yet reached retirement eligibility. The court will use a formula which awards the non-military spouse a percentage of the soldier's military pension based upon the number of years they were married while the spouse was in the military.

Be aware that debts incurred after separation are presumed marital.

SEPARATION AGREEMENTS

The parties to divorce may agree on the issues of maintenance, child custody and support, and property division. If so, they can voluntarily enter into a separation agreement which can be made part of the final divorce decree.

The court will review your agreement to determine if the terms are "unconscionable" on the face of the document. In other words, absent substantial abuse or over-reaching, the court will likely adopt the provisions of your agreement. Therefore, it is imperative that you carefully scrutinize the agreement before signing, and obtain legal counsel for advice, if necessary.

TAX CONSEQUENCES OF DIVORCE

Alimony or spousal maintenance. Maintenance payments may be deductible to the paying spouse and be considered as income to the recipient spouse if certain conditions are met. If the maintenance is deducted from the payer, then it will be included in the gross income for federal tax purposes of the person receiving the maintenance.

Child Support. Normally, the parent having physical custody of the child will have the right to claim the child as a dependent for tax purposes. However, pursuant to the applicable provisions of the Internal Revenue Code and Kentucky case law, the court may apportion dependency exemptions between the parties. You may elect to alternate the right to claim a child as an exemption, or choose to share the children in proportion to the parties' relative share of the total family support.

HEALTH INSURANCE FOR CHILDREN

The court will require one or both parties to maintain reasonable health insurance coverage for the children. Credit is given to the paying parent under the Child Support Guidelines for amounts actually paid for medical insurance premiums. Coverage provided by an employer (like the U. S. Army) at no cost to the employee does not entitle the parent to a credit.

RETIREMENT BENEFITS

Retirement benefits may be and in most instances are considered marital property. Some retirement programs (i.e., Teacher's retirements) may be protected by statute from being divided in a divorce. In such cases, the law may also preclude

the party with the protected retirement from receiving the opposite party's retirement. Military retirement is divisible by the court as marital property. The portion considered marital property is typically defined by a formula that uses the months of marriage while on active duty as the numerator and the total months of active duty service at retirement as the denominator. *See Uniformed Services Former Spouses' Protection Act section for more details.*

ATTORNEY FEES AND COSTS

Kentucky allows for apportionment of attorney fees and costs, based upon a disparity in the relative financial resources of the parties. Parties to the action may agree to share attorney fees and costs or one party may be responsible for the entire amount.

FUTURE MODIFICATIONS

Provisions in your divorce agreement and decree regarding custody, child support, and visitation are always reviewable by a court of competent jurisdiction. As to future custody and support modifications, the "home state" of the children, or where they have lived for the past six (6) months (K.R.S. 403.420), will probably be the court of competent jurisdiction for custody, visitation, or support modifications. Provisions in your agreement regarding property division, debts, lump-sum maintenance, attorney fees, etc., may be difficult or impossible to modify in the future, without leave of court. Courts favor finality of litigation and you should carefully consider all the terms of the agreement before signing it.

If your financial circumstances change, it is incumbent upon you to notify your attorney and request the court to modify your child support (or maintenance) obligation as soon as possible.

ENFORCEMENT

The terms of your Agreement and Decree, especially those regarding support of dependents, are enforceable by all remedies available for enforcement of a Judgment, including contempt or incarceration. In addition, the court may award garnishment, wage withholding, and income tax interception for non-payment of child support.

PREPARING FOR THE DIVORCE COURT

In most states, including Kentucky, it is possible to obtain a "do-it-yourself" divorce without hiring an attorney. For the younger couple, married a short time with no minor children and no appreciable property, this may be a practical solution; however, for the older couple, divorcing after a long-term marriage, it can lead to financial disaster. Therefore, when facing the prospect of divorce, your first action should be to find an attorney, whose practice is in family or divorce law, and who is aware of the new laws for the military, and how they impact on the laws of your state. In addition, some counties are more open to this type of procedure than others. So, you may wish to consult with the attorney about local court practice. It is to your advantage to have an attorney draft a property settlement agreement that you consider fair. Attorneys are hired for their negotiating skills, not their trial skills; the goal is to settle quickly and get the best agreement possible without going to trial. Don't wait for your spouse to present an unacceptable settlement. Let him/her negotiate YOUR settlement. The following are some guidelines for:

FINDING AN ATTORNEY

- ❖ DON'T use the attorney who is representing your spouse. Divorce is an adversary situation and one person cannot adequately represent both parties.
- ❖ DON'T use attorneys who are family friends as their loyalties will be divided; however, you might ask them for a referral.
- ❖ DON'T use an attorney not aware of the new laws to protect the dependent spouse or you will have to supply the information.
- ❖ Be cautious about using family attorneys if they have worked for you or your spouse on wills and other financial matters. They may have a closer rapport with your spouse.
- ❖ DO ask friends or acquaintances who have been recently divorced, or know someone who has, about the attorneys they used.

One method of checking the professional qualifications of attorneys is to find at your local library a reference book entitled MARTINDALE HUBBELL LAW DIRECTORY. While not all attorneys are included (it is a paid listing), it is worth checking. If you want to observe attorneys in action, visit the courts where the divorce will take place on a day they are scheduled to appear. You may want to visit on motions day to observe divorce proceedings; this is when most of the divorce action takes place.

When you have the names of several attorneys, you can read the MARTINDALE HUBBELL LAW DIRECTORY at your local library and, if they are listed, check their qualifications.

The effectiveness of an attorney in presenting a client's case to the court is especially critical in divorce. Because judges are vested with broad judicial discretion and the resolution of issues takes place in an adversary setting, even in no-fault jurisdictions, effective legal skills are required. Unlike most other areas of law, where statutes and court decisions set forth precise principles and rules of law for attorneys to argue and courts to follow, family law is characterized largely by judicial discretion. Old and new statutes use such language as the court may authorize whatever is "reasonable", or "necessary", or "equitable under the circumstances." This lack of precise guidelines in family law gives judges wide latitude and vast power to decide family law matters on a case-by-case basis. Their decisions often reflect their own personal biases or values, and there is little chance of these decisions being overturned on appeal.

HIRING AN ATTORNEY

When you have the names of several attorneys, you should consult with two or three of them before making your decision. The return on such an investment is worth the cost. The choice of an attorney to represent you in a divorce is one of the most important consumer decisions you will ever make. You need someone you feel comfortable with, someone whose "style" is comparable to yours. You wouldn't think of buying a new car or a refrigerator without doing some comparison shopping; the same concept should be true in selecting attorneys because their legal skills can affect your whole future.

INITIAL INTERVIEW WITH AN ATTORNEY

Before you make a final decision on an attorney, phone the one(s) you have selected and ask the charge for an initial one-half hour interview (some may be free). A first interview does not commit either you or the attorney. If possible, take a friend with you on this and future visits and be prepared to take notes. It is better not to involve your children.

- ❖ DON'T be intimidated by an attorney's expertise; remember, you are hiring one just as you would hire a plumber or an auto mechanic; it is his professional training and experience that is important.

You may not want the divorce, but if it is inevitable, do not fight it. It is expensive to cross-file and seldom will a judge award more than you could obtain with a negotiated agreement. You want to obtain a settlement that will allow

you to live with dignity in the style to which you are accustomed. You are NOT begging for help. The initial interview will set the tone for your future relationship with your attorney. Start with discussing the attorney's: experience handling divorces that occur after long-term marriages; experience and attitude toward the handling of military divorces; extent of knowledge of the Uniformed Services Former Spouses Protection Act (USFSPA), and experience incorporating its terms into a divorce agreement; willingness to accept the case if modification and/or enforcement are needed; views toward pension sharing and providing for retirement income for wives. Do the answers agree with your own beliefs and values?

Be prepared to explain your situation BRIEFLY. Remember, this is a 30-minute interview. If your spouse has already initiated proceedings, take with you copies of all legal documents you have received.

- ❖ DO question the attorney's fees: What is the initial retainer? What does it cover? Will you receive a refund if the court orders your spouse to pay your attorney fees? What are the hourly rates? What is the hourly rate to appear in court? Will monthly statements be sent to you?

Ask for an Authorization and Retainer Agreement signed by both you and the attorney. Read it carefully. You are giving him/her your power of attorney unless you specify that you want to approve certain decisions. Ask about your attorney's assistant(s)-their names, duties, and who will appear in court for you. You should send your attorney a written request to appear in court for you and not to send an assistant. Request that copies of all documents and correspondence referring to your case be sent to you as well as a written report of any phone calls made on your behalf, particularly those with your spouse's attorney. A patronizing attitude on the part of your attorney (don't worry, I'll take care of everything) is not acceptable.

WORKING WITH YOUR ATTORNEY

Since your initial interview with the attorney will have set the tone for your relationship, you should expect to be an active participant in the proceedings. Ask the attorney for an outline of events that will normally be a part of the divorce. You have asked to be kept informed by way of written reports and you, in turn, must keep your attorney informed. Keep a record of the time you spend with your attorney, subtracting phone interruptions, and bring it to the attention of the secretary when leaving. Make an effort to be in court with your attorney. If you are not, the opposing attorneys may negotiate a settlement.

Prepare as complete a statement as you can of the family financial position (the more information you can provide, the less work involved and the less it will cost you). If possible, include income, copies of, or information on: -Income tax returns for the past two or three years. If you do not have

them, contact the Internal Revenue Service for copies. You signed them; you are entitled to them. -All papers pertaining to your family home and other real estate, such as deeds, mortgages, etc. -Military and other pensions. If your spouse has not retired, find out the date he will be eligible and estimate the amount he will receive. Know his date of entry into the service, his rank and any prior service such as Reserves or National Guard. If your spouse will be receiving a non-military pension, provide your attorney with their date of eligibility and other pertinent information. - Survivor Benefit Plan (SBP). If your spouse has already retired and subscribed to the SBP, find out the amount of coverage and monthly payments. (noted on W2 form attached to income tax return). -Bank accounts. -Stocks and bonds--check income tax returns for this information but be aware that tax exempt securities may not be included. -Outstanding debts - such as credit cards, car payments, bank loans, etc. -Household furnishings and personal possessions. Estimate total value (refer to insurance coverage); list separately any item(s) of particular monetary and sentimental value. -Insurance policies, (life, car, household, etc.). -A budget adequate for your needs. You may not get everything you ask for but DON'T start with a minimum. -Investigate the use of vocational counselors as "expert witnesses" to establish the earning potential given up by the homemaker. Most important is providing information from factual statistics that confirm the labor market's reluctance to employ older women who MUST return to work.

NOTE: Gathering of some of the above information depends on state laws regarding a spouse's legal right to knowledge of marital assets in areas such as: -Obligation of financial institutions (banks, savings and loans, etc.) to reveal amounts of accounts. -Amount of military pension. Acquiring this information will depend on laws in the state where the action will take place. In states which consider military pensions as part of the income, any asset that is a source of future income is 'discoverable'. This means demanding income information (present and future) from your spouse's attorney by requesting a disclosure of assets (Discovery Request). If unsuccessful, go to court and ask for it. Be sure that you know the laws of the state where he/she claims a residence. Be aware of the jurisdictional requirements contained in 10 USC, sec. 1408 (c) (4).

BE AWARE THAT:

If you are served with divorce papers but do not answer them, you are part of the suit; and your spouse may, in some states, obtain a judgment by default. You must prove that you were not properly served. Your spouse can also obtain a court order for publication, publish a notice in a local paper and then obtain the divorce by default. This is possible especially in cases where the petitioner does not know the addresses of their spouse. If you are served and do nothing, then there is *no requirement that you be sent a copy of the final divorce*

decree. There will be no property settlement or award of alimony.

As your case progresses, communicate with your attorney in writing rather than by phone. Except in cases of emergency, phone calls are not effective and can be expensive (you will be charged for your attorney's time). They disrupt the internal workings of the office and frequently cannot readily provide the information you seek, thus requiring a return call. By writing and keeping copies, both you and your attorney will have a record of what has been said. If you must call, leave a message describing your request so that your attorney can have an answer for you when he returns your call. Remember the assistant clerks and secretaries are bound to secrecy in your case.

- ❖ DON'T depend on an attorney for emotional support. They are not trained for this and it is an unnecessary expense for you to spend your time discussing personal problems. It is much better to consult a trained therapist and/or support groups sponsored by various organizations in your community.

Sometimes family and friends can be helpful and supportive but again you must make careful choices. Anyone can be called as a witness against you. Don't admit fault to anyone.

FINANCIAL CONSIDERATIONS

If charge cards, utility accounts, bank loans, etc. are in your spouse's name (Mrs. John Jones) have them changed or reissued to also include your name (Alice Jones) in order to establish a credit rating for yourself. If this is not done, you may be considered (after separation and/or divorce) as a new account and have to apply again to a store or financial institution where you have been a valued customer for years. An established credit rating is vital for a person without a salary. Ask your local credit bureau about the appropriate procedures for establishing accounts for separated and/or divorced spouses (*similar to accounts that a widow can set up in her own name*). All people should have their own checking accounts and savings accounts and credit cards. If you do not, try to establish them before official separation.

Rewrite your will. In some states, divorce and/or remarriage will NOT invalidate your old will.

WRITING YOUR PROPERTY SETTLEMENT AGREEMENT (PSA)

Take copies of current and pending legislation to your attorney so that you can be covered in the event that future legislation is enacted. Consider adding a statement in your PSA to allow you to go back to court for new benefits in the event of a change in state or federal laws.

Ask for a pro rata share of your spouse's pension(s). A pro rata share is the number of years of marriage while the pension was being earned divided by the number of years the member served times 50%. Some state courts still will NOT award a portion of the pension per se but will accept such a provision if your spouse agrees. If they do not agree and the court makes the decision, you may still be awarded support in an equal amount. If your spouse takes another government job after retirement, their military pension may be reduced, or eliminated entirely when they retire from the second job. Consider adding a provision in your PSA to protect you against such a contingency. If your husband has not yet retired at the time of divorce, ask for alimony until you begin receiving your share of the pension. In that case, your PSA should include a stipulation that your spouse will notify you of their retirement date and/or give you permission to contact the Finance Center for the information.

Consider the tax consequences. Unless otherwise stated, you are responsible for income tax on the money you receive whether it is for alimony or a portion of the pension as property.

Decide whether you will need permanent alimony or rehabilitative alimony (ending after a set number of years); your job prospects depend on your age, education, and past work experience. Remember that you have EARNED financial security (the same as your spouse) after a long-term marriage career devoted to homemaking, child raising, and enduring the personal sacrifices required by military life.

You are entitled to Cost of Living Adjustments (COLAS) if you get a percentage of the pension; if you do not, try to have COLAs included in your settlement agreement.

If your decree states that your award will be paid by allotment, you will not be able to receive direct pay from the Finance Center if your spouse cancels the allotment.

Ask that you be named the irrevocable beneficiary of your spouse's Survivor Benefit Plan (SBP) and have it written into the settlement agreement. If you are not eligible for the SBP, negotiate for an annuity or life insurance policy (on your spouse) with you the owner of the policy. Ask to have your spouse's life insurance policies, including group life, irrevocably assigned to you as beneficiary, with you as the owner of the policy; and pay the premiums yourself if they refuse to do so. Notify the insurance company by certified letter (with a copy for your files) that you are the beneficiary. Instruct them to allow no borrowing against the policy and to inform you if any payments are missed.

Spousal support ends on the death of your former spouse, as does any portion of a pension you are awarded. There are no survivor's benefits payable from an ex-spouse's estate. It is very important that older wives list as PROPERTY whatever intangibles they can (pension funds, insurance, royalties, receivables, etc.), rather than rely on spousal support for all

future income.

Ask for a share of all real and personal property acquired during the marriage. Consider whether you want to keep the family home or receive other assets. Your decision should depend, in part, on the equity in the home and its physical condition. Often the court will order the home sold in order to divide its value. Attorneys frequently favor this action, because their fees can be paid out of escrow. You must decide what is best for you. The house is a shelter, an investment, a tax write-off, an income potential, and has credit value. However, maintaining a large house can be a physical and financial burden.

If not eligible for military health coverage and your ex-spouse is retired and has another career, retain, if possible, group health membership in your ex-spouse's present employment plan for you and the children. If remaining a member is NOT possible under the plan, explore the conversion right to an individual health policy. If none of the above is possible, negotiate to have your ex-spouse pay the premiums on a new plan for you.

Ask for child support THROUGH their higher education. Use an expert witness, such as an economist, to testify on the REAL cost of child raising, using graphs to illustrate changing

costs.

Be sure your attorney covers you in the event that pending and future legislation is enacted.

❖ DO NOT WAIVE ANY OF YOUR FUTURE RIGHTS.

CHANGING ATTORNEYS

When your attorney files your first official paper(s) with the court, THAT attorney becomes your "attorney on record". This means that YOU can discharge him at any time but, unless you agree or the court orders, the attorney cannot withdraw from your case. Remember, you are the employer and the attorney is your employee; you should not tolerate poor representation. However, you must learn to distinguish between poor representation and information that is unpleasant but true. When attorneys say that something is not obtainable, they may not be fighting hard enough, but more likely they are pointing out the legal fact. It is not the attorney's fault that the law is not always fair. If your attorney procrastinates or doesn't return your calls, write a letter explaining the problem(s). If this fails and you feel you must find a new attorney, request a copy of your complete file. It is a violation of legal ethics (subject to discipline by most state bars) for an attorney to withhold your file for ANY reason, including non-payment of fees.

SUPPORT OF DEPENDENTS

SOLDIERS MUST COMPLY WITH COURT ORDERS AND WRITTEN SUPPORT AGREEMENTS

Under Army Regulation 608-99, a soldier is required to provide financial support to family members and to obey court orders on child custody. This obligation exists even if the family is separated geographically because of military service. The dollar amount of this support is measured by what is stated in any court orders or written support agreements. In the absence of a court order or written support agreement containing a financial support provision, a soldier will provide interim minimum financial support which is roughly based upon an amount equal to the soldier's Basic Allowance for Quarters (BAQ) at the with-dependents rate for the soldier's rank.

INTERIM MINIMUM FINANCIAL SUPPORT

Soldiers will provide interim minimum financial support for their family members until a court order or written support agreement is obtained. The specific amount of the financial support will depend on the number of family members, whether the soldier is supporting more than one family unit, and whether the husband and wife are both in the military.

- ❖ *Single Family Unit.* If the soldier has only one family unit to support (no children from prior marriage), then he or she will provide the following financial support:

-If the soldier's family is not living in family quarters, the soldier will provide financial support equal the soldier's BAQ at the with-dependents rate. This will be provided even though the soldier is not receiving BAQ or is occupying Government family quarters.

-If the soldier's family is living in family quarters, the financial support provided will be an amount equal to the difference between BAQ at the with- and without-dependents rate. When the supported family members move out of Government family quarters, support will be provided at an amount equal to BAQ at the with-dependents rate.

- ❖ *Multiple Family Units.* For example, if the soldier has been married before and has a current spouse or children from more than one marriage, then each supported family member will receive a pro-rata share of the BAQ at the with-dependents rate. Each family member's share will be determined by dividing the amount equal to the BAQ at the with-dependents rate by the total number of supported family members

(excluding former spouses). Family members who must be supported include the current spouse, children, and adopted children. Under Kentucky law, a soldier is not required to support step-children when they no longer reside in the soldier's household under his or her supervisory control.

The payment of any pro-rata amount, however, will be paid in the following order and manner:

-First, any court-ordered support will be paid as stated in the decree.

-Second, supported family members living in Government family quarters will receive an amount equal to the difference between the BAQ at the with- and without-dependents rate.

-Lastly, the remaining family members will receive a pro-rata amount of the BAQ at the with-dependents rate. This will be regardless of the amount of support provided to other family members.

- ❖ *Soldiers Married to Each Other.* Soldiers do not have to provide financial support to a spouse on active duty in the military unless required by a court order or written support agreement.

CHILDREN OF PARENTS WHO ARE BOTH IN THE MILITARY

- ❖ *Single Family Units.* If the soldier does not have custody of any child of the marriage, then the soldier will pay an amount equal to the difference between BAQ at the with- and without-dependents rate to the soldier-parent having custody. This amount will be paid regardless of which soldier-parent is receiving BAQ or occupying Government family quarters.

If each soldier-parent has custody of one or more children from their marriage, then neither Army member is required to provide financial support to the other.

- ❖ *Multiple Family Units.* The interim minimum financial support will be treated just like other multiple family unit situations as shown above except that the amount figured by pro-ration will not diminish the support owed to children of parents who are both in the military. Children of Army parents will receive an amount at least equal to the difference between the

soldier's BAQ at the with-and without-dependents rate.

arrearages could result in involuntary allotments or garnishment of the soldier's pay, contempt of court, or recoupment of BAQ received by the soldier.

RELIEF FROM SUPPORT PAYMENTS

If the soldier wants to reduce the amount of support required by court order, then the soldier must go back to court to get it reduced. If the soldier wants to reduce the amount of support owed under a written support agreement, then the soldier must get it changed by a court order or another written support agreement.

Battalion Commanders may release a soldier under his or her command from the provisions of AR 608-99 in the following situations: the order in question was issued by a court without jurisdiction, a court order is silent as to the obligation of a soldier to provide financial support to his or her family members, the income of the spouse exceeds the military pay of the soldier, the soldier has been the victim of a substantiated instance of physical abuse, the supported family member is in jail, or the supported child is in the custody of another who is not the lawful custodian.

METHOD AND FORM OF SUPPORT PAYMENTS

Unless the court order or written support agreement provides otherwise, financial support will be paid by cash, check, money order, or allotment. The monthly financial support payments are due on the first day of the month following the month for which support is due. If the family members are not residing together, the soldier will ensure each family member receives his or her pro-rata share of interim minimum financial support.

A soldier may comply with AR 608-99 by directly paying nongovernmental housing expenses on behalf of family members. Nongovernmental housing expenses are limited to rent, real property taxes and property insurance due under an escrow agreement, and the principal and interest payments due on any outstanding loan secured on the nongovernment housing. Nongovernmental housing expenses do not include housing costs such as utility or cable television charges.

A soldier will receive credit for payments to others, on behalf of, and with the agreement of supported family members. If there is a disagreement on the terms of payment to others in an oral agreement which cannot be resolved, then the soldier will continue to make full payments directly to the spouse in cash, check, money order, or allotment. Examples of payments to others include rent, utilities, interest on loans, charge accounts and insurance payments.

SUPPORT ARREARAGES

❖ *Court Orders and Written Agreements.* Soldiers must comply with court orders regarding arrearages. These

❖ *Interim Minimum Financial Support.* Although a soldier is encouraged to pay back support owed from not complying with the interim support provisions when there is no court order or written agreement, the soldier cannot be ordered to pay back such amount. However, the soldier is subject to administrative and punitive action for not complying with the regulation.

MAKING A NONSUPPORT COMPLAINT

A family member who is not receiving financial support as required by Army regulations can contact the soldier's immediate commander directly. The commander is responsible for investigating the allegation of nonsupport and responding directly to the family member, attorney, or legal assistance attorney.

The family member can also contact civilian social services, retain a civilian attorney, or see a legal assistance attorney at the military installation closest to them for help in nonsupport matters.

The soldier's pay can be garnished for failure to pay court ordered alimony or child support. An involuntary allotment can also be initiated if a soldier is behind in child support or child and spousal support payments. Initiation of garnishment or an involuntary allotment requires action by a court or administrative agency.

KENTUCKY CHILD SUPPORT ENFORCEMENT

Civilian assistance for the enforcement of child support obligations is available in Kentucky through any regional office of the Division of Child Support Enforcement. Kentucky has a toll free child support hotline: 1-800-248-1163. The number for the Elizabethtown, Kentucky Office of Child Support and Paternity Enforcement is (502) 766-5085. Any parent with minor children who need or are owed child support can get help. The maximum charge for assistance is a non-refundable fee of \$25.00.

Services provided include location of responsible parents; establishing paternity, child support orders and medical support; and enforcement and collection of support payments and medical support.

You can obtain information brochures by calling the Kentucky toll-free child support hotline at 1-800-248-1163.

DEPENDENT IDENTIFICATION CARDS

If a soldier refuses or cannot sign an application for a dependent identification card or the soldier's whereabouts are unknown, then the spouse can go to the ID Card section of his personnel office (or a local one if necessary) who can issue a temporary card and take action for obtaining a permanent identification card and enrolling the spouse and the children in DEERS for eligibility for medical benefits.

PATERNITY CLAIMS

Soldiers are not required by regulation to support a child born out of wedlock unless the soldier either admits the child is his or a court order has determined paternity identifying the soldier as the father of the child.

Paternity complaints can be forwarded to the unit commander who will inform the soldier of the complaint. If the soldier refuses to answer the questions or denies paternity, then the soldier is not required to provide support for the child until a court order has been obtained. If the soldier admits paternity, then he is expected to provide financial support for the child just like any other family member. In Kentucky, the Child Support and Paternity Enforcement Office can take action on behalf of the mother and child to require blood tests to determine paternity of the child.

UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

HISTORY

The Uniformed Services Former Spouses' Protection Act (USFSPA) became fully effective on February 1, 1983. The purpose of the USFSPA (10 U.S.C. 1072, 1076, 1086, 1408, 1447, 1448, 1450, 1451) is to protect former spouses by allowing the states to divide military retirement pay as part of a divorce order. Prior to 1983, the states were not allowed to divide military retired pay in divorce cases (*McCarty v. McCarty*, 453 U.S. 210 (1981)). However, in 1983, Congress enacted the USFSPA. In 1989, the Supreme Court held that disability pay from the Veteran's Administration (VA) was excluded from retired pay (*Mansell v. Mansell*, 490 U.S. 581 (1989)). This means that a soldier who is to receive VA disability benefits can exclude disability pay from any division of property in a divorce. All he or she has to do is waive an equivalent amount of his military retired pay.

WHAT THE USFSPA DOES

The USFSPA allows the states to treat military retired pay as either marital property or community property. This means that depending upon the state's marital property laws, military retirement pay can be divided in the same manner as all of the other marital property. Under USFSPA, some former spouses (as discussed below) can receive their share of military retired pay directly from the Defense Finance and Accounting Service (DFAS). The law also provides that some former spouses may be entitled to continue to receive military benefits, such as PX and commissary privileges and health care. USFSPA also allows for a former spouse to be designated as a beneficiary in a survivor benefit plan (SBP).

WHAT THE USFSPA DOES NOT DO

The USFSPA does not **require** that civilian courts divide military retired pay as property. The law does not establish a uniform formula for determining a spouse's share of the service member's retirement benefits. The law does not require an overlap of military service and marriage as a prerequisite to the division of military retired pay as property (although many states utilize the overlap of service time and marriage as the key factor in determining the spouse's share).

The USFSPA does not create a federal right to receive a portion of a retirement package. It simply gives the states control over the division of retired pay. This includes determinations on property settlements, alimony or spousal support obligations, and child support obligations.

JURISDICTION

The USFSPA may be applied in any of the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands and the Trust Territories of the Pacific.

A court may divide retirement pay as property if any of the following exist: the service member is domiciled within the state; the service member resides in the state for a reason other than military orders; or the service member consents to jurisdiction.

Some states require a service member's right to retirement pay to have vested before they will divide the pay as property (e.g. Indiana and Arkansas). States apply different standards to the vesting of retirement benefits (generally, 18 or 20 years of service).

In most community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) the courts will consider a portion of either spouses pension as the property of the other spouse. The percentage of the pension awarded the non-earning spouse will be based on the number of years of the marriage during the time the pension was being earned; other factors may be taken into consideration.

Courts in equitable property states may also award a portion of the pension as property. Because of the U.S. Supreme Court decision in *Mansell v. Forbes* (May 30, 1989) courts may divide only disposable retired pay. Spousal support (alimony) may be awarded for an indefinite or a limited time. It ceases upon remarriage. Consult your lawyer for the practice being followed in your state.

COMMISSARY, PX & HEALTH CARE

A former spouse, that has not remarried, can continue to receive these benefits if they meet the 20/20/20 test. This means that the marriage must have lasted at least 20 years, the service member had 20 years of service time, and there was 20 years of overlap between the marriage and service time. Remarriage terminates the right to a continuation of these benefits. However, a subsequent divorce in the second marriage may revive PX and Commissary rights.

A former spouse that meets a 20/20/15 test may qualify for transitional health care. If there was 15 years of overlap between marriage and service, a former spouse may qualify for 1 year of additional health coverage following the divorce.

The former spouse must not be enrolled in any employer-sponsored health insurance plan.

Those qualifying for privileges under The Former Spouses Protection Act, as amended, may apply for an ID card at any installation of their ex-husband's service branch. The different services have different requirements for documentation.

DIRECT PAYMENT TO SPOUSE

To receive a direct payment, the court must issue a final decree of divorce separation or approval of a property settlement. The court order should contain certification or statements that the member's rights under the Soldiers' and Sailors' Civil Relief Act were complied with.

If a former spouse meets the 10/10/10 test, he/she may receive payment of retired pay directly from DFAS. 10/10/10 means 10 years of marriage, 10 years of service and a 10 year overlap of the marriage and service.

Finally, the order must state the amount of the payment in a specific dollar amount or specific percentage of disposable retired pay.

The Law is retroactive. The date of the divorce does not matter but the decree must be validated within 90 days of submission.

Direct pay to ex-spouses cannot exceed 50% of the member's disposable pay. For those divorced before 4 February 1991, disposable pay is arrived at after deducting amounts: owed to the United States for fines, etc., withheld for federal, state or local income tax, deducted for SBP payments if the former spouse is beneficiary. For those divorced after 4 February 1991, personal debts and income tax withheld are not deducted. If the divorce was final after November 14, 1986, there will be a deduction of Chapter 61 disability pay based on the percentage of disability at the time the member retired. VA disability and any later increases will be deducted.

No payments will be made from the retired pay of a member retired for disability under Chapter 61, Title X, if the divorce was final before November 14, 1986.

Payment of up to an additional 15% of disposable retired pay is authorized in order to honor a garnishment order for child or spousal support.

Garnishment for non-payment of a property settlement for other than a division of retired pay is also permitted.

When more than one ex-spouse is entitled to make a claim, their respective court orders will be honored on a "first come, first served" basis.

If the court awarded more than 50% of disposable pay prior to the Mansell decision, the retiree is personally liable for any amount in excess of that paid directly by the Finance Center.

There are no special rules for a former spouse to receive direct payments of child support and alimony awards.

DOMESTIC ABUSE

The USFSPA allows former spouses to collect their portion of retired pay even if the service member does not retire due to domestic abuse. The requirements for payment under these circumstances are: a Court Order awarding a portion of retired pay as part of property division; the service member had enough time in service to qualify for retirement, but lost retirement rights due to misconduct involving the abuse; the court order allows for payment to the abused spouse or to the parent of a child that was victimized by abuse.

DOD CONTINUED HEALTH CARE BENEFIT PROGRAM

Anybody that loses their entitlement to military health care (e.g. former spouses, non-career soldiers, etc.), may enroll in this insurance program negotiated by DOD. The purpose is to provide health coverage, for those who lose entitlement, until alternate health coverage can be obtained (up to 36 months). The program is premium-based. The coverage is not free. The program is designed to mirror TRICARE, but it is not part of TRICARE.

SURVIVOR'S BENEFIT PLANS (SBP)

Under the Uniformed Services Former Spouses Protection Act, as amended, a military retiree may name his ex-spouse or ex-spouse and child (children) as beneficiary of the SBP if they were already divorced at the time of his retirement or if she was the beneficiary when they were married. In the latter case, application for reinstatement of a former spouse must be received by the Secretary concerned within one year of the divorce. A court may order the assignment of the SBP.

The current version of the USFSPA allows for the involuntary designation of a former spouse as the beneficiary in an SBP. Therefore, a court may order that a former spouse be designated as a beneficiary whether or not that is the wish of the service member. This is called a "deemed election" of a beneficiary. It is not automatic. A deemed election must be requested by the former spouse. Furthermore, a former spouse may be designated as a beneficiary of an SBP in the same category as current spouses.

THE SURVIVOR BENEFIT PLAN

The 1986 Department of Defense Authorization Act (PL 99-145), effective March 1, 1986, changed the basic structure of the SBP. A military member retiring after March 1, 1986 will be enrolled automatically in the SBP with full coverage for his spouse as beneficiary unless both the member and the spouse agree in writing to elect less than full coverage or coverage for a child only. Under the previous system the spouse was notified of the member's decision but her consent was not required. If at the time of retirement, the member has no spouse, he may elect coverage for a child or for another person under the insurable interest category.

The member and spouse together may elect less than the gross retired pay as the "base amount" upon which payments and benefits will be calculated. The minimum base amount that may be selected is \$300.

The beneficiary will receive 55% of the base amount until age 62; after age 62, the amount will drop to 35% of the base amount selected. There will be no social security offset as there was in the previous system. Those who were enrolled in the plan before March 1, 1986, are grandfathered in. When the member dies, the beneficiary will receive payments under the new system or the old social security offset, whichever is most advantageous for her. Benefits will be discontinued if the widow remarries before age 55. However, if the second marriage ends because of death or divorce, payments to the widow will be resumed.

When a retiree who has enrolled in the SBP with his spouse as beneficiary is divorced, he is obligated to notify the appropriate Finance Center. Coverage will cease and any payments made since the divorce will be refunded. If the divorced retiree dies without having remarried, no one will receive the benefits even if he has not notified the Finance Center and has continued payments. If he remarries, the new spouse will be covered automatically after one year of marriage. However, at the time of the divorce, the retiree may elect to reinstate his former spouse (or former spouse and minor child/children) as beneficiary in the spouse category if

she was the beneficiary at the time they were married. An active duty member may agree at the time of divorce to name his ex-spouse as beneficiary of the SBP when he retires. If the election is voluntary on the part of the member/retiree, there must be a written notarized agreement signed by both and it should be incorporated into the divorce decree and property settlement. The decision can be revoked only by a new court order. Application for the reinstatement of a former spouse must be made to the appropriate Finance Center within one year of the date of divorce.

A provision in PL 99-661 (Nov. 14, 1986), allows a court to require a person to elect the SBP for a former spouse or for both a former spouse-child. The Department of Defense is honoring such elections only if the former spouse was the beneficiary when they were married. In addition, the former spouse must submit a request to be an SBP beneficiary, to the appropriate military finance center, within one (1) year of the date of the court order.

The cost for spouse or former spouse coverage is 6.5% of the base amount selected. Those with a base amount of less than \$720, will pay 2.5% of the first \$349 (indexed to active duty pay raises) of the base amount plus 10% of the remainder if they were enrolled in the Plan before March 1, 1990.

There are advantages and disadvantages to the SBP as opposed to an assigned regular life or term policy on your ex-husband with you as beneficiary. Periodic (rather than lump sum) payments may be a disadvantage to the SBP. Advantages are that the amount withheld for SBP is tax deductible, the cost may be lower for SBP, and COLAs will be received when payments to you begin. With regular life or term insurance, paid in lump sum, interest accrued on the lump sum could equal or surpass the COLAs. Also, the lump sum will go to your beneficiaries on your death (rather than, as in the SBP, being returned to the fund). With all of this in mind, you should consult with an unbiased insurance agent and/or a tax accountant.

FREQUENTLY ASKED QUESTIONS

SOME QUESTIONS ON DIVORCE

1. **Can a military attorney obtain a divorce in Kentucky for me?** NO. You will need to hire a private attorney to file for divorce and get a judgment.

2. **Who pays for my lawyer?** As a general rule, you must retain and pay for your own attorney in a divorce case. In Kentucky, the court is permitted after considering the financial resources of both parties, to order one party to pay a reasonable amount for the cost and attorney's fees.

3. **What if my spouse will not give me a divorce?** The judge is the person who grants a divorce, not your spouse. Once you have filed the petition for divorce at the court house, your attorney will serve a copy of it on your spouse. If your spouse does not respond within 20 days of receiving a copy of the petition and the summons to appear in court, you will probably be granted a divorce by default.

4. **Is my divorce final when the judge signs the written judgment?** ALMOST. After the judge signs the written judgment, it is delivered to the circuit clerk who records it in the civil docket book. This notation is the entry of the judgment, and the divorce becomes effective on that date.

5. **Can I resume my maiden name after my divorce?** YES. The wife may request the court to order her maiden name or a former name restored if there are no children of the parties.

6. **Can I use mental cruelty, adultery, or other marital misconduct as a ground for divorce in Kentucky?** NO. The only ground for divorce is irretrievable breakdown of the marriage.

7. **If my home is another state, but I am stationed in Kentucky, can I file for a divorce in Kentucky?** YES. The Kentucky statute specifically provides that the Circuit Court has jurisdiction if it "finds that one of the parties, at the time of the action was commenced, resided in this state, or was stationed in this state while a member of the armed services, and that the residence or military presence has been maintained for 180 days next preceding the filing of the petition."

8. **Can the judge in Kentucky order a property division at the time of the divorce?** YES. As part of the divorce, the judge can divide the marital property of the parties. If both parties are before the court, then the judge can dispose of all the marital property regardless of its location. However, if the party being sued has refused to respond and has not been personally served with the petition for divorce, then the judge can only divide the marital property located in Kentucky. The judge cannot divide separate property, that which was acquired before the marriage; the judge can only assign each spouse's property to him or her.

9. **How will the judge divide the property?** Marital property will be equitably divided in a just and fair manner between the spouses. Marital property includes a soldier's military retirement even if the soldier has not yet reached retirement eligibility. The court uses a formula which awards the non-military spouse a percentage of the military pension based upon the number of years they were married while the soldier-spouse was in the military.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771. Our hours of operation are Monday through Friday, 0800 - 1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall (north of the post office on Knox Street).

APPENDIX A

Uniformed Services Former Spouses' Protection Act¹	Length of Time that Marriage Overlaps with Service Creditable for Retirement Purposes³			
	Number of Years			
Benefits for Former Spouses²	0 to <10	10 to <15	15 to <20	20 or more
Division of Retired Pay ⁴	X	X	X	X
Designation as an SBP Beneficiary ⁵	X	X	X	X
Direct Payment ⁶				
Child Support	X	X	X	X
Alimony	X	X	X	X
Property Division ⁷		X	X	X
Health Care ⁸				
Transitional ⁹			X	
Full ¹⁰				X
Insurance ¹¹	X	X	X	X
Commissary ¹²				X
PX ¹²				X
Dependent Abuse				
Retired Pay Property Share Equivalent ¹³		X	X	X
Transitional Compensation ¹⁴	X	X	X	X

FOOTNOTES

- ¹ Pub. L. 97-252, Title X, 96 Stat. 730 (1982), as amended. This chart reflects all changes to the Act through the amendments in the National Defense Authorization Act, Fiscal Year 1994, Pub. L. 103-160 (1993).
- ² For guidance on obtaining a military identification card to establish entitlement for health care, commissary, and PX benefits, see appropriate service regulations (e.g., AR 640-3). Former spouses of reserve component members may be entitled to these benefits; see the following notes for applicable benefits.
- ³ Except for Dependent Abuse Victims Transitional Compensation payments, this chart assumes that the member serves long enough to retire from an active duty component or reserve component of the Armed Forces (generally this will mean (s)he has twenty years of service creditable for retirement purposes, but can mean fifteen years in the case of the Voluntary Early Release and Retirement Program [statutory authority for this program expires in 1999]).
- ⁴ At least one court has awarded a portion of military retired pay to a spouse whom the retiree married after he retired, Konzen v. Konzen, 103 Wash.2d 470, 693 P.2d 97, cert denied, 473 U.S. 906 (1985).
- ⁵ Federal law does not create any minimum length of overlap for this benefit; the parties' agreement or state law will control a former spouse's entitlement to designation as an SBP beneficiary.
- ⁶ See 10 U.S.C. §§ 1408(d) & 1408(e) and 32 C.F.R. part 63 for further guidance on mandatory language in the divorce decree or court-approved separation agreement. The former spouse initiates the direct payment process by sending a written request to the appropriate finance center.
- ⁷ While eligibility for direct payment does not extend to former spouses whose overlap of marriage and service is less than ten years, this is not a prerequisite to award of a share of retired pay as property to the former spouse (see Note 4).
- ⁸ To qualify for any health care provided or paid for by the military, the former spouse must be unremarried and must not be covered by an employer-sponsored health care plan; see 10 U.S.C. §§ 1072(2)(F), 1072(2)(G) & 1072(2)(H). Department of the Army interpretation of this provision holds that termination of a subsequent marriage by divorce or death does not revive this benefit, but an annulment does. These remarriage and employer-insurance restrictions do not limit eligibility to enroll in the civilian health care insurance plan discussed in Note 11.

⁹. "Transitional health care" was created by Pub. L. 98-625, § 645(c) (not codified), as a stop-gap measure while a civilian health care plan was negotiated for former spouses and other who lose an entitlement to receive military health care (see Note 11). The program subsequently was modified and narrowed by the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100-456, Title VI, § 651, 102 Stat. 1990 (1988). Current program benefits are described at 10 U.S.C. § 1078a, titled "Continued Health Benefits Coverage." Qualifying former spouses are those who are unremarried, who have no employer-sponsored health insurance, and who meet the "20/20/15" requirement (i.e., married to the member for at least 20 years, and the member has at least 20 years of service that are creditable for retirement purposes, and the marriage overlaps at least 15 years of the creditable service). Transitional health care now includes full military health care for 1 year after the date of the divorce, and during this period the former spouse is eligible to enroll in the civilian group health care plan negotiated by DOD (see Note 11).

Note that for health care purposes, 10 U.S.C. § 1072(2)(G) treats a 20/20/15 former spouse as if he or she were a full 20/20/20 former spouse (20 years of marriage, 20 years of service, and 20 years of overlap) if the divorce decree is dated before April 1, 1995. A 20/20/15 former spouse of a reserve component retiree with a divorce decree prior to April 1, 1985, can receive full health care too, but only if the member survives to age 60 or if he or she elected to participate in the Reserve Component Survivor Benefit Program upon becoming retirement eligible.

¹⁰. "Full health care" includes health care at military treatment facilities and that provided through the CHAMPUS insurance program. A former spouse of a reserve component retiree is eligible for this benefit upon the retiree's 60th birthday (or on the day the retiree would have been 60 if (s)he dies before reaching age 60) if (s)he meets the normal qualification rules (i.e., an unremarried 20/20/20 former spouse who is not covered by an employer-sponsored health care plan); see 10 U.S.C. § 1076(b)(2).

¹¹. Implementation of the Department of Defense Continued Health Care Benefit Program (CHCBP) was directed by Congress in the National Defense Authorization Act for Fiscal Year 1993 (see 10 U.S.C. § 1078a). It is a premium based program of temporary continued health benefits coverage available to eligible beneficiaries. Medical benefits mirror those available under the basic CHAMPUS program, but CHCBP is not part of CHAMPUS. For further information on this program, contact a military medical treatment facility health benefits advisor, or contact the CHCBP Administrator, P.O. Box 1608, Rockville, MD 20849-1608 (1-800-809-6119). The CHCBP replaces the Uniformed Services Voluntary Insurance Program (USVIP).

¹² Pursuant to statute and service regulations, commissary and PX benefits are to be available to a former spouse "to the same extent and on the same basis as the surviving spouse of a retired member..." Pub. L. 97-252, Title X, § 1005, 96 Stat. 737 (1982); see Army Regulation 640-3. The date of the divorce is no longer relevant for commissary and PX purposes. See Pub. L. 98-525, Title IV, § 645, 98 Stat. 2549 (1984) (amending Uniformed Services Former Spouses' Protection Act § 1006(d)). The former spouse must be "unmarried," and, unlike the rules for health care, any termination of a subsequent marriage revives these benefits. Qualified former spouses of reserve component retirees receive commissary and PX benefits when the retiree reaches age 60 (or when (s)he would have reached age 60 if the retiree dies before that time, but in such cases the entitlement arises only if the retiree elected to participate in the Reserve Component Survivor Benefit Plan when (s)he became retirement eligible; see AR 640-3). Notwithstanding the provision of the Act and the regulation, however, the extent of commissary and exchange privileges in overseas locations may be restricted by host-nation customs law.

¹³ When a retirement-eligible member receives a punitive discharge via court-martial, or is discharged via administrative separation processing, the member's retirement benefits are lost. In certain cases where the court-martial or separation action was based on dependent abuse, eligible spouses may receive their court-ordered share of retired pay (divided as property) as if the member had actually retired. Authority for these payments was created in the National Defense Authorization Act, Fiscal Year 1993, § 653, Pub. L. 103-484. An overlap of marriage and service of at least ten years is a prerequisite to receipt of payments. The National Defense Authorization Act, Fiscal Year 1994, § 555, Pub. L. 103-160, clarifies that eligibility begins on the date the sentence is approved and does not have to wait until the member is actually discharged.

¹⁴ The National Defense Authorization Act, Fiscal Year 1994, § 554, Pub. L. 103-160, also creates authority for monthly transitional compensation to dependents of a non-retirement eligible member separated from the service by reason of dependent abuse.

APPENDIX B - BAH II-2001 CHART

BAH II - 2001

PAY GRADE	MARRIED FULL RATE	Differential
O-10		
O-9	1152.60	223.50
O-8		
O-7	1152.60	223.50
O-6		
O-5	1000.50	178.80
O-4		
O-3	729.30	118.50
O-2		
O-1	557.10	151.50
O3E		
O2E	707.40	148.80
O1E		
W-5	851.10	74.40
W-4		
W-3	715.20	138.00
W-2		
W-1	568.80	141.00
E-9		
E-8	690.60	174.60
E-7		
E-6	592.50	195.30
E-5		
E-4	462.90	144.00
E-3		
E-2	410.70	158.10
E-1 >4		
E-1 <4	410.70	186.60

MONTHLY BASIC PAY TABLE

Effective January 1, 2001

YEARS OF SERVICE

PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
COMMISSIONED OFFICERS															
O-9	7,550.10	7,747.80	7,912.80	7,912.80	7,912.80	8,114.10	8,114.10	8,451.60	8,451.60	9,156.90	9,156.90	9,664.20	9,803.40	10,064.70	10,356.00
O-7	5,682.30	6,068.40	6,068.40	6,112.50	6,340.80	6,514.50	6,715.50	6,915.90	7,116.90	7,747.80	8,280.90	8,280.90	8,280.90	8,280.90	8,322.60
O-6	3,368.70	3,954.90	4,228.80	4,280.40	4,450.50	4,450.50	4,584.30	4,831.80	5,155.80	5,481.60	5,637.00	5,790.30	5,964.60	5,964.60	5,964.60
O-3	2,638.20	2,991.00	3,228.00	3,489.30	3,656.40	3,639.70	3,992.70	4,189.80	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10
O-1	1,987.70	2,079.00	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80
PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-2E				3,120.30	3,184.80	3,285.90	3,457.20	3,589.50	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90
WARRANT OFFICERS															
W-4	2,688.00	2,891.70	2,974.80	3,056.70	3,197.40	3,336.30	3,477.00	3,614.10	3,756.30	3,892.50	4,032.00	4,168.20	4,309.50	4,448.40	4,590.90
W-2	2,139.60	2,315.10	2,315.10	2,391.00	2,512.80	2,649.90	2,750.70	2,851.50	2,949.60	3,058.20	3,169.50	3,280.80	3,391.80	3,503.40	3,503.40
PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
ENLISTED MEMBERS															
E-8						2,622.00	2,697.90	2,768.40	2,853.30	2,945.10	3,041.10	3,138.00	3,278.10	3,417.30	3,612.60
E-6	1,575.00	1,740.30	1,817.40	1,891.80	1,969.50	2,046.00	2,122.80	2,196.90	2,272.50	2,327.70	2,367.90	2,367.90	2,370.30	2,370.30	2,370.30
E-4	1,288.80	1,423.80	1,500.60	1,576.20	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00
E-2	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10
E-1<4	964.80														
C/S \$12,960.70 M/S \$4,893.60															

The source of this pay chart is Public Law 106-65, section 601(c). Note: Unofficial data is effective Jan. 1, 2001

MONTHLY BASIC PAY TABLE

Effective July 1, 2001

YEARS OF SERVICE

PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
COMMISSIONED OFFICERS															
O-9	7,550.10	7,747.80	7,912.80	7,912.80	7,912.80	8,114.10	8,114.10	8,451.60	8,451.60	9,156.90	9,156.90	9,664.20	9,664.20	10,004.70	10,356.00
O-7	5,682.30	6,068.40	6,068.40	6,112.50	6,340.80	6,514.50	6,715.50	6,915.90	7,116.90	7,747.80	8,280.90	8,280.90	8,280.90	8,280.90	8,322.60
O-6	3,368.70	3,954.90	4,228.80	4,280.40	4,450.50	4,450.50	4,584.30	4,831.80	5,156.80	5,481.60	5,637.00	5,790.30	5,964.60	5,964.60	5,964.60
O-3	2,638.20	2,991.00	3,228.00	3,489.30	3,658.40	3,839.70	3,992.70	4,189.80	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10
O-1	1,997.70	2,079.00	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80
PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-2E		3,120.30	3,184.80	3,285.90	3,457.20	3,589.50	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90
WARRANT OFFICERS															
W-4	2,688.00	2,891.70	2,974.80	3,056.70	3,197.40	3,336.30	3,477.00	3,614.10	3,756.30	3,892.50	4,032.00	4,168.20	4,309.50	4,448.40	4,590.90
W-2	2,139.60	2,315.10	2,315.10	2,391.00	2,512.80	2,649.90	2,750.70	2,851.50	2,949.60	3,058.20	3,169.50	3,280.80	3,391.80	3,503.40	3,503.40
PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
ENLISTED MEMBERS															
E-8						2,622.00	2,697.90	2,768.40	2,853.30	2,945.10	3,041.10	3,138.00	3,278.10	3,417.30	3,612.60
E-6	1,575.00	1,740.30	1,817.40	1,891.80	1,969.80	2,097.30	2,174.10	2,248.80	2,325.00	2,379.60	2,421.30	2,421.30	2,421.30	2,421.30	2,421.30
E-4	1,288.80	1,423.80	1,500.60	1,576.20	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00
E-2	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10
E-1-4	964.80														
C/S \$12,960.70															
M/S \$4,893.60															

Pay Grades E-5 to E-7 received an increase in basic pay in accordance with Public Law 106-398. Note: Unofficial data is effective Jul. 1, 2001

ATTORNEY REFERRAL LIST

FIRM NAME	ADDRESS	TELEPHONE	PRACTICE AREAS	COMMENTS
ADDINGTON, PAMELA K.	P.O. BOX 177 312 MULBERRY ST ELIZABETHTOWN, KY 42701	(270) 737-5554	CRIMINAL, DIVORCE, PERSONAL INJURY, REAL ESTATE MATTERS, GENERAL PRACTICE, AND BANKRUPTCY	FREE INITIAL APPOINTMENT
ADKINS, FERRELL	39 PUBLIC SQUARE ELIZABETHTOWN, KY 42701	(270) 351-7171 OR (270) 765-7181	DIVORCE, PERSONAL INJURY, CRIMINAL, BANKRUPTCY, ADOPTION	FREE INITIAL APPOINTMENT - DOES NOT PRACTICE IN MAGISTRATE COURT
ARNETT, QUICK, COLEMAN AND SHAW	128 WEST DIXIE AVE PO BOX 847 ELIZABETHTOWN, KY 42702	(270) 765-4112	PERSONAL INJURY, PRODUCT LIABILITY, AND ESTATE PLANNING	FREE INITIAL APPOINTMENT - DOES NOT PRACTICE IN MAGISTRATE COURT
BAILEY, WILLIAM G.	PO BOX 278 24 PUBLIC SQUARE ELIZABETHTOWN, KY 42702	(270) 769-5360 OR 1-800-226-3084	PERSONAL INJURY, MEDICAL MALPRACTICE, FEDERAL TORT CLAIMS, CRIMINAL, MILITARY, DOMESTIC RELATIONS	INITIAL APPOINTMENT IS NOT FREE - RATE IS \$100 PER HOUR - DOES NOT PRACTICE IN MAGISTRATE COURT - FORMER ARMY JAG OFFICER
COOPER, THOMAS E.	215 N. MULBERRY ST ELIZABETHTOWN, KY 42701	(270) 769-1410	ESTATE PLANNING, PERSONAL INJURY, AUTOMOBILE ACCIDENTS, CIVIL LITIGATION, DUI	INITIAL APPOINTMENT IS NOT FREE - RATE IS \$110 PER HOUR

ATTORNEY REFERRAL LIST

FIRM NAME	ADDRESS	TELEPHONE	PRACTICE AREAS	COMMENTS
CRUSOTT, RUSSELL L.	347 W. LINCOLN TRAIL BLVD, SUITE 100 RADCLIFF, KY 40160	(270) 351-6045	DOMESTIC RELATIONS, REAL ESTATE, PERSONAL INJURY, WILLS, ESTATES, AND PROBATE	FEE MAY BE CHARGED FOR INITIAL APPOINTMENT
HALL, MONTY	30 PUBLIC SQUARE ELIZABETHTOWN, KY 42701	(270) 737-3762	PERSONAL INJURY, DIVORCE, WORKERS COMPENSATION, AND MEDICAL MALPRACTICE.	FREE INITIAL APPOINTMENT
HANDLEY, SCOTT	410 W CHESTNUT ST SUITE 332 LOUISVILLE, KY 40202	(888) 288-4878	GENERAL PRACTICE	FREE INITIAL APPOINTMENT - FORMER ARMY JAG OFFICER
HATFIELD, DIONNA	106 HELM ST ELIZABETHTOWN, KY 42701	(270) 765-4660	DIVORCE, ADOPTION, PERSONAL INJURY	FREE INITIAL APPOINTMENT - DOES NOT PRACTICE IN MAGISTRATE COURT
LONNEMAN, PHYLLIS K.	202 N MULBERRY ST ELIZABETHTOWN, KY 42701	(270) 765-2190	CRIMINAL, CIVIL LITIGATION, DOMESTIC RELATIONS, PROBATE, PERSONAL INJURY, DUI	FREE INITIAL APPOINTMENT
MILLER & DURHAM	400 WEST LINCOLN TRAIL RADCLIFF, KY 40160	(270) 351-4383	DOMESTIC RELATIONS, BANKRUPTCY, PERSONAL INJURY, CRIMINAL, TRAFFIC VIOLATIONS, DUI, COLLECTIONS	FREE INITIAL APPOINTMENT
MITCHNER, KENT D.	2075 BYPASS SUITE 106 BRANDENBURG, KY 40108	(270) 422-2611	BANKRUPTCY, DIVORCE, ADOPTION, DUI, CRIMINAL, PERSONAL INJURY	FREE INITIAL APPOINTMENT - DOES NOT PRACTICE IN MAGISTRATE COURT

ATTORNEY REFERRAL LIST

FIRM NAME	ADDRESS	TELEPHONE	PRACTICE AREAS	COMMENTS
MUSSELWHITE & MEINHART	385 WEST LINCOLN TRAIL RADCLIFF, KY 40160	(270) 351-6032	GENERAL PRACTICE	FREE INITIAL APPOINTMENT
NEAL & ASSOCIATES PSC	1629 S. DIXIE HWY RADCLIFF, KY 40160	(270) 351-8008	CRIMINAL, UNCONTESTED DIVORCE, PERSONAL INJURY, CIVIL LITIGATION, MILITARY LAW	FREE INITIAL APPOINTMENT
PATE, JAMES L.	123 W. DIXIE AVE ELIZABETHTOWN, KY 42702-0248	(270) 769-2379 AND (270) 351-3572	WILLS AND ESTATES, TRUSTS, COLLECTIONS CORPORATIONS, REAL ESTATE, AND DOMESTIC RELATIONS	FREE INITIAL APPOINTMENT
PEARL, NICK L. AND ASSOCIATES	611 KNOX BLVD RADCLIFF, KY 40160	(270) 351-4747	CRIMINAL DEFENSE, DIVORCE, BANKRUPTCY, PERSONAL INJURY, ESTATE PLANNING, PROBATE, DUI	FREE INITIAL APPOINTMENT
SCHWAGER, PHILLIPS AND CUNNINGHAM, LLC	SUITE 688, STARKS BLDG 455 S FOURTH AVE LOUISVILLE, KY 40202	(502) 582-2581	PERSONAL INJURY, WRONGFUL DEATH, DOMESTIC RELATIONS, WILLS AND ESTATES, ADOPTIONS, CIVIL LITIGATION	FREE INITIAL APPOINTMENT - DOES NOT PRACTICE IN MAGISTRATE COURT
SELDOMRIDGE, JOHN A.	543 N WILSON AVE RADCLIFF, KY 40160	(270) 351-1102	PERSONAL INJURY, MEDICAL MALPRACTICE, FEDERAL TORT CLAIMS, BANKRUPTCY, BUSINESS LAW, DUI	FREE INITIAL APPOINTMENT
SIPES, DARREN	PO BOX 275 BRANDENBURG, KY 40108	(270) 422-3939	REAL ESTATE, PERSONAL INJURY, DIVORCE, ESTATE PLANNING, PROBATE, GENERAL CIVIL PRACTICE	FREE INITIAL APPOINTMENT - DOES NOT PRACTICE IN MAGISTRATE COURT - MR. SIPES IS ALSO THE MEADE CO ATTY. (PROSECUTOR)

ATTORNEY REFERRAL LIST

FIRM NAME	ADDRESS	TELEPHONE	PRACTICE AREAS	COMMENTS
SKEETERS BENNETT AND WILSON	550 WEST LINCOLN TRAIL BLVD RADCLIFF, KY 40160	(270) 351-4404	PERSONAL INJURY, MEDICAL MALPRACTICE, DOMESTIC RELATIONS, CRIMINAL, ADOPTION, DUI	FREE INITIAL APPOINTMENT - MR. BENNETT IS A FORMER ARMY JAG OFFICER
THOMPSON LAW OFFICES - GREG THOMPSON	1600 A-1 N DIXIE RADCLIFF, KY 40160 AND 200 S MAIN ST ELIZABETHTOWN, KY 42701	(270) 352-1125 (270) 737-1125	CRIMINAL DEFENSE, DUI, BANKRUPTCY, AUTO ACCIDENTS, UNCONTESTED DIVORCES	FREE INITIAL APPOINTMENT - FORMER ARMOR OFFICER