

Divorce in the Military

By: Eric Roper

Search the phrase "military divorce" and the old Google-machine will spit back over 3 million hits. Despite an increased focus by the military on providing marital and family support services, including counseling, child care, and stress management courses, about 3.5% of all military marriages ended in divorce last year. Although this figure is roughly equal to the civilian divorce rate last year, the fact is that repeated deployments, family separations and stress exact a heavy toll on many military couples.

There are many myths and partial truths about divorce in the military circulating amongst those 3 million Google hits along with some very good information for anyone contemplating a divorce. Whether you are the military member or the civilian spouse, it is crucial to understand what potential factors or laws may apply to your case and to sort out those myths from the facts. The truth is that there are unique aspects to a military divorce case that, if improperly handled or ignored, could result in a difference of hundreds of thousands of dollars in retirement pay or other benefits.

The first step for many servicemembers and civilian spouses facing a potential divorce is the local base legal assistance office. There the client may meet with a military attorney (or JAG) who may explain the process and discuss some of the military-specific issues in a divorce such as the Servicemembers Civil Relief Act (SCRA) or the Uniformed Services Former Spouses Protection Act (USFSPA). This is a very valuable resource and one that I encourage all my military clients to avail themselves of. However, there are limitations on the military attorney's representation. For example, the attorney may not be licensed in the jurisdiction where the divorce is pending and may not be familiar with the local rules of practice. In addition, most services prohibit military attorneys from actually appearing on behalf of clients in civilian courts. Finally, if your spouse has been seen by the same office before you, that office may be prohibited from advising you due to a conflict of interest.

So what are some of those military-specific issues you should be aware of if you are contemplating a divorce action. Two of them are mentioned above; the SCRA and the USFSPA. The SCRA, formerly known as the Soldiers' and Sailors' Civil Relief Act, provides some safeguards for military members in civil matters, including divorce actions. The Act's protections kick in where the member's service negatively impacts his or her ability to appear in court and may permit the member to re-open a default judgment entered against the member if certain requirements are not satisfied.

Perhaps the most misunderstood Federal law often involved in military divorce cases is the USFSPA. Depending on the length of the member's military service, the duration of the marriage, and the amount of overlap between the years of service and marriage, this Act may entitle the former spouse of the member to certain medical benefits and base privileges. The Act also permits state courts to divide disposable military retirement as marital property. From the former spouse's perspective, one important consideration is how to insure the military pension if it is awarded by the court since the pension is payable only so long as the member is alive. If the military member dies one day after retiring from active duty, there will be no retirement pay no matter what it says in the divorce decree. There are available options for doing this including the Survivor Benefit Plan but this needs to be addressed in the divorce decree itself and there are specific deadlines for electing this coverage.

One often-repeated myth about the USFSPA is that unless the parties were married at least 10 years, there can be no division of the military pension. This is false as there is no minimum number of years required for dividing a military pension. The 10 years of marriage factor is important only for

determining when the former spouse becomes eligible for direct payment of the retirement pay from the government. Equally false is the belief that if the parties were married at least 20 years, the former spouse is entitled by right to 50% of the pension. The truth is that there is no set percentage of the pension that the former spouse is automatically entitled to regardless of the length of marriage.

There are obviously other important considerations that should be discussed with an attorney who is experienced with these statutes and the laws of your jurisdiction. If you have questions about your military divorce case, call for a free initial consultation.