

USE CAUTION WHEN REPRESENTING SERVICEMEMBERS AND THEIR FAMILIES

Marital and Family Law Section

Chair: Joseph D. Hunt, Harris and Hunt, P.A.



MacDill Air Force Base is home to two of the largest military commands in the United States, which means that chances are good that at some point you will be retained to represent a servicemember, spouse or former spouse of a servicemember. These family law cases need special treatment because, in addition to Florida laws, they are governed by the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Former Spouse's Protection Act (USFSPA).

The first consideration when representing a servicemember is whether a stay is appropriate. There is no automatic stay that applies to servicemembers in civil cases, but, a stay is generally granted upon proper application. The SCRA provides that a court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days. The application must include a letter or other communication from the servicemember stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and a date when the

servicemember will be available, along with a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter. The SCRA is not intended to protect a servicemember who starts an action while deployed or to serve as a delay tactic. Furthermore, the current military duty must materially affect the member's ability to participate, which means that not all military service will warrant a stay.

Looking to alimony and child support, servicemembers receive several types of income not all of which is taxable. This materially affects child support and alimony. Part of the income is a housing allowance, which varies depending on the servicemember's station, rank, and dependents. Retired servicemembers may receive multiple forms of pay, including retired pay, disability pay or concurrent retirement and disability pay. The interplay between these forms of pay and the taxability of each form can greatly affect the ability to pay alimony and child support. Knowing what type of income is available, how it is taxed



and when it changes can be a huge advantage in your representation.

With regard to equitable distribution, the USFSPA provides that the court may treat disposable retired pay as marital property. Accordingly, Florida courts can, and do, divide the marital portion of the military pension regardless of the length of marriage. There is no ten year minimum for division, however, in order to receive direct payment.

Ten years of service needs to overlap with ten years of the marriage. The pension can be divided in the Final Judgment. If done correctly, no separate order is needed.

In representing the servicemember or spouse, it is imperative to know what laws apply and how to leverage those laws strategically. If you are not experienced in this area, at a minimum, consult with an attorney who practices in the area of family law for servicemembers.



Author:
Kristin R. H. Kirkner, Esquire, DeCort & Kirkner, P.L.

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