

WAR AND PEACE

MILITARY BENEFIT ISSUES IN WAR TIME

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EDUCATION

B.A. (Math/Hist), University of Texas, Austin, TX (1967).
M.B.A. (Econ/Mgmt), University of West Florida, Pensacola, FL (1973).
J.D., St. Mary's University, School of Law, San Antonio, TX (1975).

PROFESSIONAL ACTIVITIES & CERTIFICATIONS

Partner, Higdon, Hardy & Zuflacht, L.L.P. (1997—)
State Bar of Texas (1976—): Current Member, Sections on Family Law, Litigation, , Civil Appellate, Military Law (Chair 2005-06) and ADR; Member, Texas Bar Journal Committee (1980-96).
Board Certified, Family Law, Texas Board of Legal Specialization (1981; Recertified: 1986, 1991, 1996, 2001).
Board Certified, Civil Appellate Law, Texas Board of Legal Specialization (1996; Recertified: 2001).
San Antonio Bar Association: Member (1976—); Director (1992-94); Founding Chair, SABA Family Law Section (1992—); Chair, CLE Committee (1990-1992).
San Antonio Family Lawyers Association: Member (1982—); President (1988-89); Officer/ Director (1986-1990).
Texas Academy of Family Law Specialists: Member (1982—).
American Academy of Matrimonial Lawyers, Fellow (1994—)
Matrimonial Arbitrator, AAML Trained & Certified (1995—).
San Antonio Bar Foundation, Life Fellow (1992—).
Texas Bar Foundation, Life Fellow (1996—).
Associate Member (Mediator), Society of Professionals in Dispute Resolution (SPIDR)(1993-2000).
Member, Texas Association of Mediators (San Antonio Chapter) (2000—)
Bexar County Dispute Resolution Center, Member, Board of Directors (1997—)
Panel of Pre-Suit Mediators, San Antonio Bar Association (1992-1996).
Member, Panel of Settlement Week Mediators, State District Courts in San Antonio (1988-).
Author and Speaker: American Bar Association, State Bar of Texas; San Antonio, Travis County, Val Verde County and Victoria County Bar Associations; San Antonio Family Lawyers Association; San Antonio College; public school classes, military, civic and other groups.
Marquis' *Who's Who in American Law* (1991—).
Marquis' *Who's Who in America* (2004—).
Marquis' *Who's Who in the World* (2004—).
"AV" Rating, Martindale-Hubbell Law Directory (1992—).
Texas Monthly Magazine, "Texas Super Lawyers," Nov. 2003, Oct 2004, Oct 2005 (Selected by peers).
Scene in SA Magazine "Best Family Lawyers in San Antonio," August 2005, 2006.
National Registry of Who's Who, Selected as a Life Member (#138952) (2001—).
National Register's Who's Who in Executive and Professionals, (2001, 2002, 2004, 2005).
International Directory of Distinguished Leadership, Tenth Edition, Distinguished Leader, American Biographical Institute, Inc. (2002).
Global Directory of Who's Who, (2006).
Settlement Consultants, Inc. -- Mediator Training
Managing Commercial Conflicts Through Mediation (40 hrs., 9/92).
Family Dynamics (24 hrs., 10/93).
Bexar County Dispute Resolution Center (30 hours, 7/06).

PUBLISHED PROFESSIONAL LEGAL ARTICLES

- Servicemembers Civil Relief Act and Amended New Benefits*, Representing Small Business Clients Seminar, State Bar of Texas Annual Meeting, State Bar of Texas Professional Development Program, June 15, 2006, Austin, Texas.
- Child Support and Service Members*, A Short Court on Military Family Law Issues, American Bar Association Family Law Section, May 3, 2006, Henderson Hall, Arlington, Virginia.
- Texas Family Law*, 16th Biennial Institute on Texas Law for Military Attorneys, Military Law Section of the State Bar of Texas, April 27-28, 2006 (Speaker/presenter of Article written by John Compere, Jo Chris Lopez and Charla M. Davies), Sam Houston Club, Fort Sam Houston, Texas.
- Military Divorces*, 29th Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, April 20-21, 2006, Austin, Texas.
- Military Issues in Family Law Cases*, Extreme Family Law Make Over IV, San Antonio Bar Association Family Law Section, March 3, 2006, San Antonio, Texas.
- Servicemembers Civil Relief Act and Amended New Benefits*, 31st Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 8-11, 2005, Dallas, Texas.
- Servicemembers Civil Relief Act and Amended New Benefits*, State Bar College Summer School, State Bar of Texas Professional Development Program, July 21-23, 2005, Galveston, Texas.
- Military Retirement—Temporary Orders, Types of Compensation, Collecting Child Support, Military Retirement Registration, and Survivor Benefit Registration Deadlines*, 28th Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, April 21-22, 2005, Galveston, Texas.
- The Law of Military Retirement and Military Retirement, Its Calculation and the Drafting of Orders Acceptable for Processing*, Family Law and The Military Seminar, The University of Texas School of Law, El Paso Family Law Bar Association, Office of the Staff Judge Advocate and Military Law Section of the State Bar of Texas, February 24-25, 2005, Briggs Army Airfield, Fort Bliss, El Paso, Texas.
- Texas Family Law*, 15th Biennial Institute on Texas Law for Military Attorneys, Military Law Section of the State Bar of Texas, April 22-23, 2004 (Speaker/presenter of Article written by John Compere, Jo Chris Lopez and Charla M. Davies), Fort Sam Houston NCO Club, San Antonio, Texas.
- Soldiers, Sailors & Military Divorces*, Family Law and The Military Seminar, El Paso Family Law Bar Association, Office of the Staff Judge Advocate, El Paso Domestic Relations Office and El Paso County Family Court Judges, February 27-28, 2003, Briggs Army Airfield, Fort Bliss, El Paso, Texas.
- Soldiers, Sailors & Military Divorces*, 28th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 5-8, 2002, Dallas, Texas.
- Texas Family Law*, 15th Biennial Institute on Texas Law for Military Attorneys, Military Law Section of the State Bar of Texas, April 25-26, 2002 (Speaker/presenter of Article written by John Compere and Jo Chris Lopez), Fort Sam Houston NCO Club, San Antonio, Texas.
- Military Marriage Dissolution, Separation Pension Division and DFAS QDROS*, ABA Standing Committee on Legal Assistance to Military Personnel (LAMP) and Military Law Section of the State Bar of Texas, November 8, 2001, San Antonio, Texas (at St. Mary's University Law School)
- Handling the Federal Retirement Plans: Military Retirement and Civil Service Retirement, Including Survivor Benefits*, 27th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 6-9, 2001, San Antonio, Texas.
- The UCCJEA in Texas*, Children's Records Law in Texas Seminar, Lorman Education Services, Inc., June 15, 2001, Austin, Texas; June 18, 2001, San Antonio, Texas.
- Military and Civil Service Retirement Plans*, Family Law for General Practitioners and Legal Assistants, Stromar Educational Services, Inc., September 27, 2000, San Antonio, Texas.
- The UCCJEA in Texas*, Children's Records Law in Texas Seminar, Lorman Education Services, Inc., June 8, 2000, San Antonio, Texas.
- QDROS, Military, and Other Benefits*, 23rd Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, May 11-12, 2000, Fort Worth, Texas.
- Military and Civil Service Retirement Plans*, Family Law for General Practitioners and Legal Assistants, Stromar Educational Services, Inc., January 26, 2000, San Antonio, Texas.
- Military and Civil Service Retirement Plans*, 25th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 16-19, 1999, Dallas, Texas.
- Overview of Military Benefits*, Basic Family Law Seminar, San Antonio Bar Association and SABA Family Law Section, June 19, 1997, San Antonio, Texas.
- Military Retirement—An Update*, 1997 20th Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, May 8-9, 1997, Dallas, Texas.
- Military/Civil Service Family Law: Getting the QDRO's Right*, American Bar Association 1997 Mid-Year Meeting, General Practice, Solo and Small Firm Section, Military Law Committee, January 31, 1997, San Antonio, Texas.
- Soldiers' and Sailors' Civil Relief Act and Military Retirement*, Val Verde County Bar Association, December 13, 1996, Del Rio, Texas.
- Drafting To Incorporate Changes in Military and Federal QDRO's*, 1995 Advanced Family Law Drafting Course, State Bar of Texas Professional Development Program, December 14-15, 1995, San Antonio, Texas.
- Division of Military Retirement Benefits*, San Antonio Bar Association Afternoon CLE, October 20, 1994, San Antonio, Texas.

Voluntary Separation Benefit Programs, San Antonio Bar Association Military Law Section, February 25, 1993, San Antonio, Texas; Travis County Bar Association, May 5, 1993, Austin, Texas; as revised, presented to Victoria County Bar Association, May 17, 1993, Victoria, Tx, and published in 21 *The SALSA Summons* No. 2 at 26 (June 1993) (Publication of San Antonio Legal Secretary's Association).

Using The Soldiers' And Sailors' Civil Relief Act To Stay Civil Proceedings, American Bar Association's Legal Assistance for Military Personnel (LAMP) Seminar, January 21, 1993, Randolph Air Force Base, Texas.

Survivor Benefit Plan And Other Military Benefits, San Antonio Family Lawyers Association, January 14, 1993, San Antonio, Texas; also published in 20 *The SALSA Summons* No. 9 at 9 (February 1993).

Military/Fringe Benefits, How Retirement/Employee Benefits Affect You and Your Clients Seminar, State Bar of Texas Professional Development Program, February 20-21, 1992, Austin/Dallas, Texas.

Soldiers' and Sailors' Civil Relief Act, 17th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 19, 1991, Dallas, Texas.

Family Violence Protective Orders, Domestic Law in Texas Seminar, National Business Institute, Inc., May 16, 1991, San Antonio, Texas.

Military Retirement, Active and Reserve, Advanced Family Law Drafting Course, State Bar of Texas Professional Development Program, December 14, 1990, San Antonio, Texas.

Military Retirement Notes, 1 *Family Law Forum* No. 3 (Dec. 1, 1988). (Method for calculation of Reserve Military Retirement.) (Publication of Texas Academy of Family Law Specialists).

COURT ADMISSIONS

Supreme Court of Texas (1976).
U.S. District Court, Western District of Texas (1978).
U.S. Court of Appeals, Fifth Circuit (1979).
U.S. District Court, Northern District of Texas (1979).
U.S. Supreme Court (1979).
U.S. District Court, Eastern District of Texas (1980).

MILITARY

Captain, U. S. Naval Reserve (Ret.) - 24 years commissioned service (US Navy 1967-1973; US Naval Reserve 1973-1991); ***now drawing retired pay!***

Designated Naval Aviator No. V-27972 (February 20, 1969).

Last Billet before retirement: Commanding Officer, NR AVT-16 Lexington 1010, Naval Reserve Center and aboard USS Lexington (AVT-16), Pensacola, FL. (1990-1991).

Naval Reserve Association: Life Member (1977-); Alamo Chapter (President, 1981-83; Officer, Director 1978-1983); Eighth District (Vice-President JAG 1989-93; Vice-President Chapter Activities 1980-1982).

San Antonio Recruiting District Assistance Council (RDAC) (1980-1992), Chairman (1989-1991).

Navy League of the United States, Life Member (2000-); Alamo Council (1989-).

The Retired Officers Association, Life Member (1992-).

San Antonio Retired Officers Association, (1992-), Life Member (1993-).

Military Awards: Navy Commendation Medal, Armed Forces Reserve Medal, Vietnam Service Medal, Vietnam Campaign Medal w/ 1 silver star (5 campaigns), National Defense Service Medal, Pistol Expert Medal, Meritorious Unit Commendation (w/ 4 bronze stars), Navy Recruiting Ribbon, Rifle Sharpshooter Ribbon.

CIVIC/COMMUNITY ORGANIZATION PARTICIPATION

San Antonio, Texas Oak Hills Rotary Club: (1978—); President (1991-92); Director (1986-93); Paul Harris Fellow (1987—); Paul Harris Benefactor (1991—).

Rotary International District 5840: District Secretary (1992-1993).

Alamo Masonic Cemetery Corporation: Member, Board of Directors: Vice-President (05/90—); Treasurer (03/86--05/90).

City of San Antonio, Texas AIDS/HIV Commission: Commissioner (1990-1993).

Bexar County Dispute Resolution Center, Member, Board of Directors (1997—).

San Antonio Public Library Foundation, Member, Board of Directors (1997-2001).

The Grand Commandery Knights Templar of Texas: Sesquicentennial Grand Commander (State Presiding Officer) (2004-2005); Elected Progressive Grand Line Officer (1996-2005); Editor, Texas Page, *Knight Templar Magazine* (2004-2006).

San Antonio Scottish Rite Learning Center of South Texas, Member, Board of Directors (2000-2006).

Lee Lockwood Scottish Rite Foundation of Texas, Member, Board of Directors (2000-2006).

San Antonio, Texas Masonic Bodies:

Presiding Officer of: Texas Council #45, Order of Knight Masons (Charter Member) (2005-2006).

Other offices: Alamo Lodge #44, A.F.&A.M. – Treasurer (2005—).

Past Presiding Officer of: Alamo Lodge #44, A.F.&A.M. (1980-81); Blue Bonnet Chapter #470, R.A.M. (1983-84, 1999-2001); Blue Bonnet Council #409, R.&S.M. (1984-85); San Antonio Commandery #7, K.T. (1992); Texian York Rite College #60 (1994-95); San Antonio Council #261, Allied Masonic Degrees (Charter Member) (1997-98); Alamo Camp, Heroes of '76, National Sojourners, Inc. (1999-2000); San Antonio Scottish Rite Bodies: San Antonio Consistory (2000-2001); Fort Sam Houston Chapter #17, National Sojourners, Inc. (2001-2002); St. Anthony Conclave #50, Order of the Red Cross of Constantine (2004-2005).

Also member of Scottish Rite Bodies, Valley of San Antonio, Southern Jurisdiction; Alzafar Shrine; Texas Priory #23 and Texian Priory #78, Knights York Cross of Honour (KYCH); Nazareth Tabernacle No. 34, Holy Royal Arch Knight Templar Priests (Elected Progressive Line Officer 2003—), and other appendant/related Masonic bodies.

Endowed member of Lodge, Chapter, Council, Commandery, College, Scottish Rite Bodies and National Sojourners, Inc.

Member, Woodland Baptist Church, San Antonio, Texas (Mbr, Deacon Body 2000— ; Mbr, Sanctuary Choir 2005-).

PERSONAL

Born October 20, 1944, McAlester, Oklahoma.

Married to former Barbara Ann Downing of Eagle Pass, Texas and have two sons, Travis, an entrepreneur and webpage developer/designer living in Austin, and Andrew, a certified public accountant with PriceWaterhouseCoopers in Dallas. All are graduates of The University of Texas at Austin.

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- I. Useful Military and Military Related Websites

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Barstow v. State, 742 S.W.2d 945 (Tex.App.—Austin, 1987, writ denied) 2

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2003 N.Y. Misc. LEXIS 114 (Supreme Court of Dutchess County, February 13, 2003,
unpublished) 10

Crawford v. Adams, 213 S.W.2d 721 (Tex.Civ.App.—Galveston 1948, writ ref’d n.r.e.) 2

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47 F.3d 1459, 31 Fed.R.Serv.3d 966 (5th Cir.), *cert. denied*, 516 U.S. 818,
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Keefe v. Spangenberg, 553 F. Supp. 49 (W.D. Okla. 1981) 17

Kelley v. Kelley, 38 N.Y.S.2d 344 (1942) 10

Kline v. Kline, 455 N.E.2d 407 (Ind. App. 1983) 13

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Martin v. Strong, 1998 WL 1765716 (USDC, W.D. Tex. 1998) 1, 3

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“War and Peace” –
 Military Benefits Issues in War Time
 By James N. Higdon

We are engaged in a declared war and have been actively engaged in the War on Terror since September 11, 2001. The terrorists, on the other hand, have been at war with us for more than ten years prior to 9/11. This paper will attempt to cover some of the benefits available to Service Members (SMs) and their families and/or their extended families during this war, as well as some that apply during peacetime.

SCRA BENEFITS

When the SM is deployed outside the continental United States (OCONUS), whether to a war zone or to Europe or even to Alaska or Hawaii, or when a Reservist or National Guard member is called to Active Duty, the first benefit that they realize is really a panoply of benefits that come from the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx §501, et seq. Appendix A.

Without addressing the “stay” and “default” provisions of the Act that was the subject of my 2005 topic at the Advanced Course, there are many provisions of the Act that provide significant benefits to the SM and his immediate family and some indirect benefits to the children of his first and/or second families. [I am going to be sexist and refer to a male SM for convenience, although many females are currently serving in all branches of our Armed Forces. It is just simpler for the purpose of this paper, and I mean no disrespect to our many female SMs.]

6% Interest Rate Cap

One of the first and most significant benefits is the interest rate cap on existing loans, credit card accounts, IRS debts and debts of whatever variety, save and except possibly guaranteed student loans. 50 U.S.C. Appx §527. Upon receipt of orders to deploy in support of Operation Enduring Freedom (Afghanistan) Operation Iraqi Freedom (Iraq or its environs) or to Kosovo, just OCONUS, or Reserve/National Guard recall to active duty orders, as applicable (hereinafter generically called “receipt of orders”), the SM should review all of his debts and determine which are charging interest in excess of six percent (6.0%) simple per annum and IMMEDIATELY draft a letter in the form attached as Appendix B to each creditor charging him interest in excess of that amount. A copy of their orders will

need to be attached, but, if the orders have not been physically received, but they have oral orders, send the letter and then follow it with a copy of the orders when they are received. 50 U.S.C. Appx §527.

Federally guaranteed student loans may be exempt as well since the SCRA did not exempt them from its application, but they are covered by 20 U.S.C. §1078(d) and 34 C.F.R. Section 682.211. Following the logic that the Congress enacted the SCRA after and in “recognition and knowledge of an existing and potentially conflicting but affected statute,” 20 USC §1078(d), the legal presumption is that even the interest rates of federally guaranteed student loans are also affected by the SCRA rate cap. However, there is no case that has interpreted this supposition.

If the creditor fails or refuses to reduce the interest rate to 6.0% simple, they are in violation of §527 and may be liable for all damages (actual and consequential and/or punitive, i.e. DTPA damages) arising from their failure to comply with the SM’s request. The existence of a private cause of action for this violation has been confirmed in *Cathey v. First Republic Bank*, 2001 US Dist. LEXIS 13150. See also *Martin v. Strong*, 1998 WL 1765716 (USDC, W.D. Tex. 1998) (“Congress clearly intended to create a private cause of action when it enacted §526.”); *Moll v. Ford Consumer Finance Company*, 1998 WL 142411 (N.D. Ill. 1998) (Court thought it illogical that Congress intended to afford SM only “defensive relief” under §526); *Hanson v. Crown Toyota Motors, Inc.*, 572 P.2d 380 (Utah 1997); *Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d 1459, 1464, 31 Fed.R.Serv.3d 966 (5th Cir.), cert. denied, 516 U.S. 818, 116 S.Ct. 75, 133 L.Ed.2d 35 (1995) (recognizing that plaintiff could have brought a cause of action in which plaintiffs sought relief against a person who was not a party to the suit at the time); *Luke v. Mercantile Acceptance Corp.*, 244 P.2d 764 (Cal.App. 1952); *Hampton v. Commercial Credit Corp.*, 176 P.2d 270 (Mont. 1946); *Bassham v. Evans*, 216 S.W. 446 (Tex.Civ.App.—Amarillo 1919, no writ) (soldier who was ejected from his premises by means of sequestration proceedings and deprived of the protection to which he was entitled under SSCRA could recover damages regardless of whether facts stated in affidavit for sequestration were true or false).

The cap can be rescinded if the creditor shows/proves that the SM is not “materially affected” by the continued implementation of the higher interest rate. 50 U.S.C. Appx §527.

Cap Applies to Others Liable with SM

This interest rate cap also applies to debts for which the SM is personally liable, including debts on which he is primarily or secondarily liable with the SM, such as a

- surety (bail bondsman),
- guarantor,
- endorser,
- accommodation maker,
- comaker, or
- any other person who may be primarily or secondarily subject to the obligation or liability.

The interest rate cap also applies to debts on which he is a personal guarantor such as a corporate or partnership debt. In *Cathey*, Mr. Cathey owned several gas station/convenience stores in a Sub-Chapter S corporation and personally guaranteed the debt of the corporate entity. The Bank said that the debt was not covered by the Act, but the Court held otherwise. Mr. Cathey had also pledged his home as collateral for the debt. His damages were very significant and, following 9/11, the Bank settled for an undisclosed sum that netted his attorney undisclosed fees he says were in the six figures.

This applies in the legal context in that attorneys frequently practice law via a Sub-Chapter S corporation, a regular corporation, or a general or limited partnership. In each case, if the SM attorney is recalled and he is liable for a note or other obligation of the law firm (Westlaw or LexisNexis book or research contract note, for instance), the law firm will reap the benefit of their SMs recall, a small and token benefit to try to make up for the lost revenue during his military service.

Statutes of Limitation Tolloed

Another benefit is that lawsuits by and/or against the SM are tolled during the period of his “orders;” that is, the period of his military service is not included in the statutory limitations period involved. 50 U.S.C. Appx §526. This applies to any period limited by law, regulation or order to bring an action or proceeding, such as a personal injury lawsuit, action for redemption of property. The tolling period may be tacked to the existing limitation period and/or other tolling provisions provided by law (limitations tolled while person outside the State, for instance, a provision rarely used, but available. Tex.Civ.Prac.&Rem.Code §16.063). In *Min v. Avila*, 991 S.W.2d 495 (Tex.App.—Houston [1st Dist.] 1999, no pet.), the SM tried to extend the limitations

period for a personal injury suit by trying to add in his weekend “drill days” along with his annual active duty. The Court approved the annual period of active duty, but not the weekend drill periods. *Id.* at 505. See also, *Barstow v. State*, 742 S.W.2d 945 (Tex.App.—Austin, 1987, writ denied)(term “assigns” as used in SSCRA excluding period of military service from limitations period included those who take real property by grant from SM); *First Nat. Bank of Hico v. English*, 240 S.W.2d 503 (Tex.Civ.App.—Waco 1951, no writ) (SM sued Bank to recover for deposits wrongfully paid out during term of his military service; limitations claimed by Bank held not to run against him); *Crawford v. Adams*, 213 S.W.2d 721 (Tex.Civ.App.—Galveston 1948, writ ref’d n.r.e.)(suit by partners, one of whom was SM, to enforce payment of note not barred by limitations since part of period occurred during military service of SM partner).

The frequent requirement of proving “material affect” running thru the SCRA does not apply to this benefit and/or detriment, depending on the posture of the SM in the case. 50 U.S.C. Appx §527.

Evictions and Distress Warrants

Upon receipt of orders, a landlord can only evict a SM tenant (or his dependents) if the landlord first obtains a court order to do so. 50 U.S.C. Appx §531. This applies to rent contracts with a SM for monthly rent of \$2400 (in 2004) adjusted by the annual consumer price index (CPI). Thus, for 2006, the applicable rent floor is \$2,615.16. So, any rental contracts for which the current rent is \$2,615.16 or less, the landlord must go to court to evict the SM or his dependents. The SM, on the other hand, must prove that his ability to pay the rent has been materially affected by his orders. However, upon filing the petition, and upon the SM’s request or the Court’s own motion, the eviction proceeding SHALL be stayed for a minimum of ninety (90) days, and/or the Court may adjust the lease obligations. The SM or his dependents may invoke the provisions of §531.

Installment Contracts for Purchase or Lease

Frequently, the SM and his dependents will find themselves in a home or an apartment lease with six or more months to go on their lease when he receives orders. Can he terminate his lease and do his wife and children (or other adult dependents) have the right to terminate the rental? The answer is “yes.” Section 535 applies to all types of lease agreements, from the home or apartment lease to a business lease to an automobile lease and obviates the necessity for

“military clauses” in a lease. This section also provides criminal penalties for its violation by a landlord/lessor, in addition to creating private causes of action to enforce its violation. 50 U.S.C. Appx §527. *See Martin v. Strong*, 1998 WL 1765716 *3, *supra*; *Moll v. Ford Consumer Finance Company*, *supra*; *Hanson v. Crown Toyota Motors, Inc.*, *supra*; *Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d at 1464; *Luke v. Mercantile Acceptance Corp.*, *supra*; *Hampton v. Commercial Credit Corp.*, *supra*; *Bassham v. Evans*, *supra*.

Home Lease or Rental Contract

This provision will most likely come into play for the married SM in the home or apartment context. The right to terminate the lease is irrespective of whether the lease was entered into before or after the SMs entry into the service, but is dependent upon his receipt of orders. He is required, however, to give notice to the landlord. An exemplar of a form that can be used to provide that notice is attached as Appendix C.

Some apartment organizations, especially the Texas Apartment Association in the Fort Hood area, determined that the cancellation of a lease by the SM did not release his wife or other dependents from the lease if they signed the lease. A technical amendment to the Act in 2004 cured this anomaly and now there is no question that the notice of termination or cancellation of a lease by the SM is effective as to his spouse or other co-signing dependent.

Business Lease or Rental Contract

To the professional or business owner, this provision is equally applicable and probably more financially significant than the ability to cancel a home or apartment lease. Frequently, business leases are much longer lease terms than are home or apartment lease terms. Again, the inception date of the lease, that is, pre- or post-service, is immaterial, the key triggering and overriding factor being the receipt of orders. Here, remember the issue of and protection afforded to a surety, guarantor, and/or if the SM is personally and/or secondarily liable on the obligation, that is, the lease agreement. Again, using the attorney example, his partners will be able to get out of their law firm premises lease if the recalled SM partner is liable on the lease. He is required, however, to give notice to the landlord. An exemplar of a form that can be used to provide that notice is attached as Appendix C. 50 U.S.C. Appx §535.

Automobile Lease

If the SM is called up OR enters the service for 180 days or more, OR he receives OCONUS PCS (outside continental US permanent change of station) orders OR he receives deployment orders for a period of 180 days or more, he may cancel his automobile lease. To do so, however, he must **provide notice of termination** of the lease **to the lessor in writing** (oral notice is not sufficient) **AND deliver** the written notice **to the lessor or his agent or grantee** (if the lease has been transferred, as many are) **along with a copy of his military orders**. 50 U.S.C. Appx §535(b)(2). The delivery may be accomplished by hand, mail (certified, RRR is recommended) or by FedEx or other delivery service. It may even be effected by email if one can ensure receipt of a confirmation of its receipt, but some form of physical delivery is best and will ensure an ability to prove the delivery. Of course, if the delivery is by “hand”, the SM should insist upon a signed receipt acknowledging the delivery of the cancellation notice.

Upon delivery of the termination notice, the vehicle must be surrendered within fifteen days, and the lease is terminated effective the date the vehicle is surrendered, and there can be no penalties for early termination. Upon surrender of the vehicle, the lessor must surrender to the terminating lessee any and all personal property and/or security deposits in lessor’s possession or be liable for damages suffered by lessee, as well as be subject to criminal misdemeanor liability. 50 U.S.C. Appx §535.

Lease Termination Relief to Lessor

Lessor may apply to a court, prior to the termination date provided in the written notice, for relief from the termination, that is, to modify the relief, if a court determines that justice and equity requires it. 50 U.S.C. Appx §535.

Breach by SM of Contracts for Purchase or Lease

In the event that a SM in receipt of orders does not timely and/or properly avail himself of the SCRA purchase money contracts and/or lease provisions and breaches the purchase money contract and/or lease terms, the lease may not be terminated by the lessor/landlord nor any personal property be repossessed without first obtaining a court order to do so. This applies to pre-service obligations for the purchase, lease or bailment of real or personal property. 50 U.S.C. Appx §532.

Mortgage Foreclosure Protection

Just as there is there is a protection for personal property contracts, leases and bailments, there is also a protection to the SM from default of a mortgage installment contract. 50 U.S.C. Appx §533.

Among the protections afforded is a court staying foreclosure proceeding and/or adjusting the payment obligation (reducing it) to an affordable monthly payment within the SM’s new budget within the general terms of the mortgage commitment. Of course, this assumes that the interest rate would be lowered to six percent per annum and may include tacking any additional principal and/or interest payments (within the 6.0% cap) to the end of the note. 50 U.S.C. Appx §533. Of course, this presumes proof of material affect.

Taxes on Personal and Real Property

If a tax or assessment falls due on personal property, including vehicle personal property taxes, or on real property occupied by SM, dependents, or employees and the SM fails to timely pay it, if the obligation arose prior to or during his military service and during period of his service the tax remains unpaid, a court can order the sale of the property for the unpaid tax only if no material affect is proven. The court may, should it choose to do so, stay the sale for the period of the SM’s service plus an additional 180 days. 50 U.S.C. Appx §561.

Income Tax Payment Deferral

If the SM shows material affect, something, in general, that is not difficult, he can obtain the deferral of the payment of his Federal, State and/or Local taxes for the period of his military service plus 180 days. The IRS is also prohibited from charging the SM any interest or penalties he may have otherwise incurred had the SCRA not applied. In this case, the statute of limitations is suspended for the period of his military service plus 270 days. 50 U.S.C. Appx §570. This provides the astute SM a significant benefit for the period of his recall and/or OCONUS deployment, but he still has to plan for the ultimate payment of his tax obligations. However, he can bank the tax money and earn interest on it during the period of his tax deferral entitlement.

Anticipatory Relief

The SCRA doesn’t require breach or default before offering protections to covered individuals, specifically allowing the SM or other “covered” persons to bring suit for anticipatory relief. 50 U.S.C.

Appx §591. Thus, a SM may, during military service or within 180 days of termination of or release from military service, apply to a court for relief —

- (1) from any obligation or liability incurred by the SM before the SM’s military service; or
- (2) from a tax or assessment falling due before or during the SM’s military service.

This section covers requests for anticipatory relief from tax liability or assessment (50 U.S.C. Appx §591(b)), stay enforcement of real estate contracts (§591(b)(1)), stay enforcement of other contractual obligations (§591(b)(2)), and when a stay under this section is granted, the effect is that the fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay (50 U.S.C. Appx §591(c)).

Of course, this is a provision for which “material affect” must be shown, but once proven, the restructured note/tax payments may be deferred and must be paid over the “extension period” plus any new payments must be paid as they become due.

These anticipatory relief provisions can and should be used in a Family Law context to request relief from pre-service obligations, such as child support or alimony, when a prospective breach is likely. For example, when the SM is earning more in his civilian job before mobilization than he will be earning on active duty, and the civilian wage garnishment will terminate upon his call to active duty, the SM should use this section to request a reduction in child support or alimony and to request a new garnishment from DFAS (Defense Finance and Accounting Service) to pay the other party on a timely basis.

Protections from Enforcement of Storage Liens

A person holding a lien on the property or effects of a SM may not, during any period of military service of the SM and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement. 50 U.S.C. Appx §537.

Additionally, the Court may on its own motion, or upon a SM’s request shall stay the proceeding (upon a showing that the SM’s ability to comply with the obligation is materially affected by their military service) for a period of time as “justice and equity require” or adjust the obligation to protect the interests of all parties. 50 U.S.C. Appx §537.

Malpractice Insurance Protections

Physicians, lawyers and other professionals designated by the Secretary of Defense are now protected from the cancellation of their malpractice insurance policy coverage. The Act suspends the applicable policy during the period of the SM’s active duty such that no premiums are owed during the suspension period. It also provides for the policy to be reinstated at pre-service rates. 50 U.S.C. Appx §593.

The Act also stays any malpractice actions during the period of the SMs service, and, as noted above, suspends the running of any applicable statute of limitations during the service period as well. 50 U.S.C. Appx §593.

Private Health Insurance Protections

Just as the Act suspends an applicable malpractice insurance policy, the same protections are afforded the SM as to health insurance policy protection. 50 U.S.C. Appx §574. During the period of active service, the SM and his dependents are covered by military medicine and/or TRICARE. Upon his release from active duty and return to civilian life, his previous health insurance policy must be reinstated at the same pre-service rates. 50 U.S.C. Appx §574.

INCOME BENEFITS AND/OR DETRIMENTS

Upon the receipt of recall orders and/or deployment orders, Reservists recalled to active duty, in addition to the normal pays and allowances received for their pay grade and service longevity (i.e., an E-6 with 11 years creditable service for pay purposes; an O-4 with 8 years of creditable service for pay purposes), may be entitled to other “pays” based upon the job they perform. You can access the military pay charts online at <http://www.dod.mil/dfas/militarypay.html>. You can find the current pay charts that have been downloaded from this DFAS website at Appendix D.

Special pays to which a SM may be entitled include the following:

Hardship Duty Pay

Hardship Duty Pay (HDP), formerly Foreign Duty Pay, is paid at a monthly rate to a SM performing duty designated by the Secretary of Defense (SECDEF) as hardship duty. HDP is paid for specific missions as well as for location assignments. Mission assignment HDP is paid at the monthly rate of \$150.00, regardless

of pay grade or of the time spent on the mission. Location assignment HDP is payable to enlisted personnel only and varies according to the pay grade.

Hazardous Duty Incentive Pay

Hazardous Duty Incentive Pay (HDIP) is a monthly payment made to non-crew (officers and enlisted) for certain hazardous duty, such as explosive demolition or flight deck duty. This payment is currently \$225.00, but is prorated based upon the number of days of the month during which the SM was actually serving in the hazardous duty environment.

Flight Pay

Aviation Career Incentive Pay (ACIP) is an entitlement, either continuous or conditional, that is paid to a SM while performing active duty. For continuous ACIP, the SM’s entitlement is based upon meeting “aviation gate” requirements. Conditional ACIP, normally for and paid to flight surgeons, requires meeting monthly flight hours. A qualified SM, is also entitled to be paid flight pay for allowable travel time when on orders for 30 days or less.

Career Sea Pay (E4 and Above)

Career Sea Pay for Navy enlisted personnel is based on accrued years of sea duty. The rate is based upon grade and years of accrued service while serving on a ship whose primary mission is accomplished while underway.

Special Pay For Medical/Dental Corps Officers

Medical Corps, Dental Corps, and Certified Registered Nurse Anesthetists Nurse Corps officers on active duty receive “special pay,” also know as “pro pay” or “professional pay.” The amount varies depending upon the health care professional’s pay grade, longevity and specialty and also varies from time to time depending on the scarcity of the specialty. In the case of Reservists, the amount of special pay paid to such a SM will be prorated for periods less than one month.

Foreign Language Proficiency Pay

Active duty personnel and Reservists who have been certified (normally within 12 months) as proficient in a foreign language under criteria established by the several Service Secretaries may be entitled to be paid Foreign Language Proficiency Pay (FLPP). In the case of a Reservist, he will be paid a prorated amount of FLPP for each day of duty, including inactive duty

training (IDT) periods. Of course, in the case of personnel on active duty, the qualifying SM’s pay will not be prorated. For personnel serving in Iraq and/or Afghanistan who possess a language specialty peculiar to these areas of operation, you should look for an entry of “FLPP” on his LES, which will indicate his receipt of this taxable “pay.”

Family Separation Allowance

Upon deployment, all SMs having families, which include dependent children, regardless of their pay grade, are each paid Family Separation Allowance (FSA). Since it is an “allowance,” it is not taxable income. The current FSA is \$250.00 per month of deployment. This is a payment that is only paid while in a deployed state and only for that portion of a month that the SM is deployed; that is, this payment is prorated based upon the number of days of the month the SM is actually “separated from his family”—deployed.

In the case of a Reservist, FSA is only paid to Reservists *with dependents* when serving on active duty for periods of more than thirty (30) days.

FSA is paid in addition to any other allowance or per diem to which the SM is entitled. There are two types:

FSA I — Its purpose is to pay the added housing expenses resulting from the SM’s enforced separation from his dependents. To be entitled to receive this allowance, the SM must be on permanent duty outside the U.S. or in Alaska for 140 days or more. The FSA I rate is equal to BAQ without dependents for the SM’s pay grade regardless of how many dependents he has, as long as it is at least one.

FSA II provides compensation for the added expenses due to the SM’s enforced family separation for periods greater than 30 days but less than 140 days, normally. The current FSA II monthly amount is \$250, irrespective of the pay grade of the entitled SM.

COST OF LIVING ADJUSTMENT

The Cost of Living Adjustment (COLA) is a cash allowance intended to enable an equitable standard of living in areas where cost of living is unusually high. Members permanently assigned to designated areas receive this entitlement. If the cost of living in the area where the member is assigned is the same or lower than average in the U.S., COLA is not authorized to be paid. A SM deploying from an area not qualifying for COLA is not entitled to COLA

while deployed, even if the deployed location is a designated COLA area.

CONUS COLA

The COLA compensates for a portion of excess costs for non-housing expenses incurred in areas that exceed costs in an average U.S. military location by more than 8%. Housing and housing-related costs are covered under the basic allowance for housing (BAH) and excluded from CONUS COLA. The SM must absorb the first 8% of expenses above the national average.

Qualification to be paid CONUS COLA is based on the SM’s geographic duty location, that is, the zip code of duty station. COLA indexes have been computed for all military housing areas (MHAs), which represent major metropolitan areas and installations throughout CONUS. MHAs, a collection of zip codes, are determined and defined by the BAH program. Other non-MHA areas are also considered as eligible for the program based on costs for cities, townships or urban areas in the vicinity. Indexes are adjusted annually based on new cost data.

Payment of COLA is based on regular military compensation (RMC) and spendable income. RMC includes basic pay, basic allowance for subsistence, an average basic allowance for housing (BAH) and the tax advantage. Spendable income is total income, less Federal income taxes, housing and housing-related expenses, gifts and contributions, life insurance and savings.

An exception to the author’s basic premise that *all pays are taxable and all allowances are non-taxable*, the CONUS COLA is a **taxable allowance**; and is an amount that is paid to cover an average income tax. It is computed separately for members with or without dependents.

Overseas COLA

The Overseas Cost of Living Allowance is a supplement designed to equalize purchasing power between SMs overseas and their CONUS-based counterparts. The average supplement is \$300.00 per month. The basic measurement is a comparison of CONUS shopping behavior and the aggregate shopping behavior at each overseas location. Overseas COLA is paid as a percentage of spendable income. An index of 110 would result in an annual Overseas COLA of 10 percent of the spendable income corresponding to the member’s grade, years of service, and family size. This COLA index is highly

dependent on the proportion of shopping done in on-base facilities. In general, the higher the proportion of on-base shopping, the lower the index.

Overseas COLA is not intended to measure all of the differences in living overseas and living in CONUS. Cultural differences, climate differences, and inconvenience factors are taken into consideration in the payment and/or entitlement of the SM to other special pays related to his duty and/or location.

TAX FREE INCOME

Upon deploying to a hostile fire zone designated by Presidential Executive Order (i.e., Iraq, Afghanistan, certain areas of the Balkans), the SM immediately becomes entitled to receive tax-free income or income that is excluded from taxation. For definition purposes, a combat zone means any area that the President of the United States designates, by executive order, as an area in which U.S. Armed Forces are or have been engaged in combat and includes a qualified hazardous duty area.

The combat zone income exemption will apply to: (1) SMs serving directly inside a combat zone and/or SMs who participate in operations within the zone, including the airspace over it; (2) any *military pay* received by a member that is hospitalized as a result of injuries sustained while serving in a combat zone, subject to a two-year limitation (the two-year limitation period begins to run on the date of termination of service in the combat zone); (3) annual leave payments upon discharge from the service to the extent the leave was accrued during any month in any part of which the member served in a combat zone; and (4) a reenlistment bonus received in a month that the member is outside the combat zone if they completed the necessary action for entitlement to the reenlistment bonus in a month during which they served in the combat zone.

If the SM is an enlisted man, ALL of his income earned while in a combat zone is tax-free, regardless of its source. [IRC section 1 12(a)]. Thus, all of the monthly pay **and bonuses** paid to enlisted personnel during his presence within the combat zone are excluded from his gross income. The significance of the inclusion of the word “bonuses” is that if the SM reenlists while in the combat zone, all of his reenlistment and any other applicable bonuses paid and received during this presence within the combat zone are also excluded. Reenlistment bonuses for some enlisted ratings or military occupation specialties (MOS) are often in the nature of in excess of \$25,000.00 lump sum payments. Thus, this is a

significant benefit to be able to reenlist while within a combat zone.

If the SM is an officer, he, too, if within a combat zone, is entitled to a gross income exclusion. An officer’s income tax exclusion entitlement, however, is limited to the highest enlisted pay (the pay of an E-9) plus hostile fire/imminent danger pay received by that officer. [IRC section 1 12(b)]. Although not as lucrative as the similar benefit were he enlisted, it is still, nothing to sneeze at.

It is important to also understand, however, that any income salary [full or partial] and bonuses received from sources other than the military will not be tax exempt. Thus, an income differential payment from a Reservist’s civilian employer or income received from investments, etc. is taxable.

Hostile Fire Pay/Imminent Danger Pay

Associated with the SM’s entitlement to a tax exclusion, for his service within a combat zone or any presidential designated hostile fire or imminent danger area, the SM is also entitled to receive hostile fire pay (HFP) or imminent danger pay (IDP). If the SM is located within such a zone or area for any portion of a month, he is entitled to an entire monthly HFP/IDP payment, and it is not prorated for the number of days (or hours) the SM is in the zone; if he is there for even a few minutes, he gets paid the entire monthly stipend. This is the same as Hazardous Duty Incentive Pay, \$225.00 per month, but it is not prorated when paid for service in a combat zone. Additionally, a SM is not paid both HDIP and HFP; he is only entitled to receive one monthly payment since it is presumed that if he is serving within a combat zone, he is in a hazardous duty environment anyway. It is the same monthly amount regardless of pay grade: \$225.00.

IRS EXTENSIONS

In addition to receiving all or some of his income while serving in the combat zone being tax-free or tax excluded, these SMs, pursuant to §570 of the SCRA, can also obtain an extension to the deadline for filing their tax returns. The deadline extension provision applies to most tax actions that are required to be performed on or after the beginning date for the SM’s service in the combat zone, or the date the SM actually began serving in that combat zone, whichever is later. The deadline for performing certain actions, applicable to the SM’s federal taxes, will be extended for the period of his service in the combat zone plus 180 days thereafter. During the extension period, assessment and collection deadlines will also be

extended; and interest and penalties attributable to the extension period will not be charged. The extensions will apply without regard to the source of the income. The deadline extension provisions will also apply for a period of hospitalization inside the United States provided it is not in excess of five years.

The IRS deadline extension provisions also apply to individuals serving in the combat zone in support of the U.S. Armed Forces, such as merchant marines serving aboard vessels under the operational control of the Department of Defense, Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces. In addition, members who perform military service in an area outside the combat zone can qualify for the extension provisions if their service is in direct support of military operations in the combat zone, and if they receive special pay for duty subject to hostile fire or imminent danger as certified by the Department of Defense. The deadline extension provisions apply to both spouses whether joint or separate tax returns are filed.

The deadline extension provisions apply only to federal estate and gift tax returns. Federal tax and information returns, such as corporate income tax or employment taxes, are not entitled to the extension provisions. The extension provisions will also suspend compliance actions, such as audits or enforced collections.

MILITARY INCOME AND CHILD SUPPORT ISSUES

This paper is not intended to address the routine income issues associated with the calculation of child support involving all of the various Pays and Allowances received by a SM. In general, however, as noted above, Pays are always taxable, and Allowances are usually non-taxable. Thus, they should be treated differently when applying them to the Attorney General’s tax charts.

Basic Allowance for Housing (BAH) is an allowance to offset the cost of housing when you do not receive government-provided housing. Your BAH depends upon your location, pay grade and whether you have dependents. BAH rates are set by surveying the cost of rental properties in each geographic location. The rates are established such that members in each pay grade, independent of location, pay approximately the same out-of-pocket costs. Therefore, BAH rates in high-cost areas will be much greater than those in low-cost areas. The most correct BAH rates for a SM’s duty station are published on the Per Diem

Committee web page (<https://secureapp2.hqda.pentagon.mil/perdiem/bah.html>). Accessing this site will allow the practitioner to more closely approximate the SM’s BAH entitlement. It should also be noted that there are several different categories of Basic Allowance for Housing (BAH), to wit: BAH II-WITH, BAH II-WITHOUT, Partial BAH and BAH DIFF. Each is paid at different times to a SM and for different purposes, but there should be only one BAH type reflected on the SM’s LES. These are discussed below and the 2006 BAH chart is attached to his paper at Appendix E. This same information can also be accessed at http://www.defenselink.mil/militarypay/pay/bah/02_ty pes.html.

Different Types of BAH

There are several types of BAH to satisfy various housing situations that occur among military members. In general, the amount of BAH a SM receives depends on his location, pay grade, and whether he has dependents. Under most circumstances, the SM receives BAH for the location where he is assigned, not where he lives. Additionally, the SM may be entitled to some BAH amounts if he is residing separately from his dependents. This occurs in situations involving unaccompanied overseas tours or having a dependent child that resides with a former spouse. The rules regarding these situations can become quite complex.

BAH With Dependents and BAH Without Dependents

The SM with permanent duty within the 50 United States, who is not furnished government housing, is eligible for Basic Allowance for Housing (BAH), based on the SM's dependency status at the permanent duty ZIP Code. A SM stationed overseas, including U.S. protectorates, who is not furnished government housing, is eligible for Overseas Housing Allowance (OHA) based on the SM's dependency status. If the SM is serving an **unaccompanied** overseas tour, he is eligible for BAH at the "with dependents" rate, based on the dependent's US residence ZIP Code, plus OHA at the "without dependents" rate, if the SM is not furnished government housing overseas.

Partial BAH

The SM without dependents who is living in government quarters is entitled to a Partial BAH.

BAH II

BAH-II is the housing allowance for the SM in particular circumstances, for example, reservists on active duty less than 30 days. It does not vary by geographic location. BAH-II was set based on the old Basic Allowance for Quarters (BAQ), which was based on the national average for housing. BAH-II is published annually and is determined by increasing the previous year's table by the percentage growth of housing costs.

BAH-Diff

BAH-DIFF is the housing allowance amount for the SM who is assigned to single-type quarters and who is authorized a basic allowance for housing solely by reason of the SM's payment of child support. A SM is not entitled to BAH-DIFF if the monthly rate of that child support is less than the BAH-DIFF. BAH-DIFF is determined by the SECDEF and was equal to the *difference* between BAH-II with dependents and BAH-II without dependents in 1997 for the SM's grade. BAH-Diff is published annually and is determined by increasing the previous year's table by the percentage growth of the military pay raise.

Military Child Support Guidelines When No Court Order

One last “help” in dealing with a SM where there is not a child support order in effect. You need to be aware that each service branch has a different policy and method of dealing with interim child support in paternity and/or separation and/or pending divorce situations in absence of a court order. Not only are each Service's guidelines different, but each Service's enforcement methods and rules differ as well. Although each Service does enforce written agreements between parties, it behooves the practitioner to know not only the interim support guidelines of “your” SM's Service branch, but their enforcement rules as well for situations when there is not an existing court order. These guidelines, rules and/or regulations for each service branch can be found in the following publications:

Army – Army Regulations (AR) 608-99, Family Support, Child Custody & Paternity (you can access this one online by “googling” “608-99”)

Navy – Navy Military Personnel Manual art. 1754-030, para. 4

Marine Corps – Order P5800,16a Marine Corps Manual for Legal Administration, Ch. 15, para. 15001

Air Force – Secretary of the Air Force Instr. 36-2906, Personal Financial Responsibility, para. 3.1 – 3.3

Coast Guard – U.S. Coast Guard Commandant Instr. M1000.6A, ch. 8M

OBTAINING MILITARY PAY RECORDS

The practitioner should have no real difficulty in obtaining a SM's pay records since SM should always have a fairly recent LES since he receives one each month. If the SM and/or his counsel are uncooperative and refuses just to give you the needed LESs, their production should be requested in discovery and, of course, if the SM is still recalcitrant, their production can be compelled. If he still refuses or says he does not have them or threw them away and never keeps them, you can have him ordered to access his *myPay* online account with DFAS. With this internet tool, he can very easily download at least the past twelve months or so of his LESs. He will need “his password” to do so, but if the court has internet access, the Court could order the SM to download and print the required LESs right there in open court (well, in chambers, anyway).

If the SM is not available and will not provide you with a signed release to allow you to contact DFAS or his pay agent at his command, you may want to use the sample motion and order that is attached as Appendix F to obtain copies of the SM's military pay records from the DFAS or from his command. The sample motion and order was modified from a sample of such a motion included in Mark E. Sullivan's recent book, The Military Divorce Handbook, which is available from the ABA Family Law Section at \$149.95 (\$129.95 for ABA Family Law Section members). Col. Sullivan (JA, USA, Ret.) is a preeminent writer and speaker on military family law issues and is certified as a family law specialist by the North Carolina Board of Legal Specialization. His book is available from the ABA.

TEMPORARY ORDERS

Child Support

Upon receipt of orders, the SM should immediately review his income situation to determine if his income will decrease as a result of his recall and/or deployment, consult his attorney and, especially if he is a recalled Reservist, determine whether to file a motion to obtain temporary orders to *temporarily* reduce his child support for the duration of his recall. This should be a “no brainer,” but often the SMs who need to do this the most may not be able afford the legal representation to pay to have it reduced. As such, we have a duty to these individuals to ensure that our SMs who are “going to war” are protected

while they are protecting our usually rather affluent, safe and secure lifestyles here at home.

The practitioner should not be afraid to ask for a temporary order of support. In 1989, the Georgia Supreme Court ruled that an order which granted a temporary change in child support did not significantly affect the rights of the SM since it was an interlocutory decree and was subject to modification in the future. *Shelor v. Shelor*, 383 S.E.2d 895 (Ga. 1989). See also *Gilmore v. Gilmore*, 185 Misc. 535, 536, 58 N.Y.S.2d 556, 557 (1945), *Jelks v. Jelks*, 207 Ark. 475, 181 S.W.2d 235 (1944), *Kelley v. Kelley*, 38 N.Y.S.2d 344, 348-50 (1942) and *Cherubini v. Cherubini* 2003 NY Slip Op 50569U; 2003 N.Y. Misc. LEXIS 114 (Supreme Court of Dutchess County, February 13, 2003, unpublished) for examples of cases involving the entry of temporary support orders despite stay requests under the Soldiers’ and Sailors’ Civil Relief Act. Although Courts are and should be very reluctant to stay a case when it means no support, that is, an unreasonable delay when there is no support order at all. **CAVEAT: The foregoing cases were decided prior to 2004 amendments to the SCRA which specifically included “temporary orders” as being affected by the SCRA.** Thus, our courts should also readily comply with the federal mandate of the SCRA to stay a case, even when it involves a temporary order for support, since it also applies to temporary orders as well. 50 U.S.C. Appx §511 (9) defines “[t]he term ‘judgment’ [to mean] any judgment, decree, order, or ruling, final or *temporary*. [Emphasis added.] 50 U.S.C. Appx §511 (9). See Appendix A, p. 2.

If you represent a SM in receipt of recall orders, you should immediately initiate a proceeding to reduce his support based upon what will usually be a temporary reduction in income based upon his new status as an active duty SM. Although the Attorney General’s office should be taking the lead in this arena, that is initiating such child support reduction suits, it is doubtful that they will since, contrary to their publicist, they usually will not help an obligor and really do not just represent the State of Texas. They rarely will represent the obligor parent in seeking and obtaining a reduction in child support, even when the facts mandate it. Their charge is to show an increase in collected child support. Thus, obtaining a decrease in child support is not good for their statistics! They purport to represent ALL OF THE CITIZENS OF TEXAS, but they don’t! They rarely will conduct a review and propose a decrease in an obligor’s child support. This similarly includes obligor Reservists who realize a reduction in their income due to being recalled to active duty. Again, this should be a “no

brainer,” but not for the Attorney General’s office that does not have a system in place to conduct such reviews in the first place, even though they have the computer capabilities to virtually instantly determine the obligor’s income.

Nevertheless, Courts should take a dim view of an obligee who attempts to delay having a hearing on a SM’s motion to reduce child support. Courts should also liberalize the application of the Texas Rules of Evidence as to the entry of a SM’s LES as “proffered evidence” in his absence without a strict adherence to the Rules of Evidence in these situations. The authenticity of a SM’s LES should not generally be questioned, at least not unreasonably so.

If the Court is reasonably certain that a delay has been precipitated by the obligee for no good reason or for the reason that she believes that the delay will result in continued inflated child support, the Court should award sanctions for the delay as well as make the reduced child support retroactive to the date when it should have gotten to Court. Further, Courts that don’t sit in a county with regularity should take special steps to ensure that the needs of a recalled SM are accommodated as much as possible to afford him the consideration of his reduced income and, thereby, his need for a corresponding reduction in his child support. We are not dealing with “deadbeat dads” in this situation; far from it. We are dealing with men and women who are ensuring we can exercise and enjoy the freedoms we have in the U.S.; we are dealing with the men and women who are putting their lives on the line to protect those freedoms. They deserve some special treatment by our court system to ensure that their financial needs in this arena are met.

If it is the SM, on the other hand who is causing an unnecessary delay, remember that bad faith may defeat the SM’s attempt to slow down the case with an SCRA stay request. When a SM demonstrates bad faith in his dealings with the court, a stay of proceedings should be denied. In *Riley v. White*, 563 So. 2d 1039 (Ala. Ct. App. 1990), a soldier failed to submit to blood tests in a paternity action before going overseas and was aware of the court proceedings, had an attorney to represent him, and was previously given a delay by the court to take the required tests; the trial court’s denial of his SCRA stay request was upheld.

Family Care Plans and Temporary Custody/Possession

All SMs who have the care of a dependent child, especially single parents, are required to complete and file a Family Care Plan (FCP) with their military

command. The FCP is a formal plan that basically tells the military that their single parent SM has made advanced plans for the care of their dependent child in the event of an unexpected deployment and/or, more particularly, a long term deployment. Although required by the military, these documents are at best advisory only, that is, they advise the military who will be the planned caretaker of the SM’s dependent child and may be construed to be some sort of “power of attorney” so to speak, but, otherwise, do not have any legal basis or standing. Additionally, they usually are prepared without consulting, much less advising, the other parent. So, what place do they play when the custodial parent is deployed and the FCP appoints someone other than the non-custodial parent, usually the SM’s new spouse and/or brother, sister or parent, when the legal tug of war begins? The answer is or should be NONE! See Tex.Fam.Code §153.001 (public policy of this State to assure that parents “have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child”).

What is a SM to do when faced with such a situation? They have a FCP in place, but have not consulted nor advised the other parent of the terms of the FCP. What effect, if any, does the SCRA have on any action that the non-custodial parent may file to gain temporary custody of their child? On the other hand, what effect, if any, does the SCRA have on any action that the SM parent may file to appoint someone other than the non-custodial parent as the temporary custodian of the child while the SM is away at war?

Well, first, the SM parent does not have the authority to usurp the authority of a Texas court, much less the authority of the court of any State by attempting to appoint, via their FCP, someone other than the other parent, unless, the other parent has been advised and has signed off on it. There is no law, federal or otherwise, that authorizes a SM parent to use a FCP to contravene the rights of the non-custodial parent, but they attempt to do so every day.

Does a FCP confer standing upon the appointee to bring a suit or to be entitled to notice of a legal proceeding that addresses the custody of the child? I don’t see how. Tex.Fam.Code §102.003—.007. Even if the appointee has had possession of the child for a period of six months, if the possession is without the agreement of the non-SM parent, how does that appointee have standing by possession? They shouldn’t. *Id.*

If the non-SM parent brings a suit for temporary custody of the child and the SM files and is granted a

SCRA stay of the temporary custody proceeding and then deploys, what standing does the FCP appointee have to defend and what defenses does the appointee have to a Habeas Corpus proceeding filed by the non-SM for immediate possession of their child? The FCP does not and cannot confer standing, so the non-SM parent petitioner should have the Writ granted and possession of the child delivered to that non-SM parent (Tex.Fam.Code §§157.371—.373; see also, Tex.Fam.Code §102.009; 153.001.), which possession continues until the SM comes back to resume full-time custodial possession of the child, and, of course, the defense of the non-SM parent’s suit for temporary custody of the child.

Of course, at this juncture, if the issue of temporary custody is now moot, the non-SM parent should, nevertheless, obtain a declaratory judgment that they owe no child support during the non-SM’s “Habeas possessory period” of the child, that is, for the duration of the SM’s deployment, or an order requiring the SM parent to refund child support paid to the SM parent by virtue of child support withheld and paid monthly to the SM parent from the non-SM parent’s income.

The issue of temporary custody may not be moot, however, since the non-SM parent now, by possession of the child during the “Habeas” temporary custody period, may now have sufficient change of circumstances, etc., grounds to pursue a permanent change of custody.

Food for thought, if nothing else.

Temporary Custody Proceedings and the SCRA

The SCRA provides that a court, upon the motion of the SM or on that court’s own motion and upon proof that the SM’s *military service materially affects* the SM’s ability to participate and/or defend (or prosecute) a legal proceeding, **SHALL GRANT** the SM a stay of the proceeding for an automatic ninety (90) days, and, thereafter, for so long as the SM’s military service continues to materially affect his ability to participate/defend/prosecute his case. But how does this play in conjunction with a court’s obligation to always act in the best interest of the child? Tex.Fam.Code §153.002. Can a court issue a “temporary order” when the SM has requested a stay pursuant to the SCRA? Probably now in view of the 2004 amendment to the definition of judgment in the SCRA: “The term “judgment” means any judgment, decree, order, or ruling, final or *temporary*.

[Emphasis added.] 50 U.S.C. Appx §511 (9). See Appendix A, p. 2.

Additionally, how does the SM’s unilaterally appointing someone other than the child’s other parent in the FCP fit with this State’s public policy to encourage and foster “frequent and continuing contact” with the other parent? Tex.Fam.Code §102.001. As to an FCP, it doesn’t.

There are no Texas appellate cases we practitioners can provide to the trial courts to show that a SCRA abatement should be and must be automatically granted without hearing any evidence or giving any consideration to the needs and/or best interest of the child before the court. As noted above, there are two very strong and staunch public policy arguments in favor of the court entering appropriate temporary orders to “protect and provide for” the child during the SM parent’s government mandated absence. Tex.Fam.Code §153.001-002. Additionally, there is also the mandate of no discrimination between the sexes or based upon the marital status of the parties before the court, although in this type of proceeding, this public policy should not be a factor. Tex.Fam.Code §153.003. So, what is a practitioner to do? Well, what follows are some cases from other jurisdictions that may be illustrative in the presentation of your client’s temporary custody position, regardless of your client’s then custodial position. **CAVEAT: Remember, however, that the following cases were all decided prior to 2004 amendments to the SCRA which specifically included “temporary orders” as being affected by the SCRA.** 50 U.S.C. Appx §511(9). The SSCRA and the SCRA as originally signed into law on December 19, 2003 did not have “temporary orders” included in the definition of a “judgment.”

SSCRA Cases

Chaffey v. Chaffey, 382 P.2d 365 (Cal. 1963).

SM-father (F) had custody of the three children, mother (M) tried unsuccessfully twice to obtain a change of custody. When M was notified that her ex-husband (F) had received orders to transfer to Guam, she served the motion and show cause order on F as he was about to leave for Guam. Although the order restrained F from taking the children outside the state and required him to appear at a hearing some two weeks hence, he left with the children and his attorney obtained a continuance of the initial hearing for four months. The court at the second setting denied F’s motion for a stay under the SSCRA and proceeded to hear testimony from the mother and her husband. At

the end of the trial, the judge awarded custody to M, commenting that F had placed himself in the position of violating an order of the court and was not now in a position to request a stay of proceedings. The **Supreme Court of California reversed**, stating that **F “understandably did not comply with the state court’s restraining order”** when he took the three children with him to Guam, departing the morning after he was served, the court noted that “It is, of course, **common knowledge that a military man on active duty, particularly when overseas, is not a free agent.**” Thus, the military transfer orders and the SSCRA trump a trial court’s authority in this fact situation.

Kline v. Kline, 455 N.E.2d 407 (Ind. App. 1983).
– Deployment Case; Good SSCRA Proof in Trial Court by SM Parent Wins Appeal.

The trial court had granted the parties’ divorce and awarded custody of the couple’s two children to the husband (F), who was in the Marine Corps. About 18 months later, Mother (M) filed a motion for contempt and emergency custody, claiming that she had been denied visitation and that there had been a substantial change in circumstances entitling her to custody of the children. Ordered to appear, F, stationed in Okinawa where the children resided with him, obtained a continuance based upon his SSCRA motion to which he attached an affidavit that stated that he was a gunnery sergeant in counterintelligence; was scheduled to deploy for classified maneuvers off Okinawa shortly; that his team commander had determined that there was no replacement for F as team chief; and that the performance of his military duties made it impossible for him to appear for the initial hearing.

Two months later, the trial court held a hearing at which F’s attorney advised the court that F was still on Okinawa; that he had applied for leave but his commander had refused to grant leave; detailed F’s unsuccessful attempts to get his commander’s order countermanded; stated that F had to stay in the Far East until about eight months after the hearing date, when he would be eligible for leave; and that F could not take leave for the reasons stated in the commander’s affidavit that:

- Marine Corps policy did not allow the disclosure of the mission of F’s counterintelligence team;
- F was assigned to the unit because he possessed specific and necessary skills; and,
- F’s loss would adversely affect the ability of the team to accomplish its mission.

The trial court, however, denied F’s renewed motion

for another SSCRA continuance, found F in contempt and awarded custody to M. The judge gave three reasons for refusing to grant F’s renewed SSCRA stay/continuance:

- F did not advise the court promptly of his inability to appear for trial;
- The case involved a claimed serious abuse of the court’s prior order; and,
- M had incurred significant travel expenses to appear for the hearing.

F’s attorney argued for a continuance before and after the trial. M’s attorney argued that F had not complied with state rules of procedure in trying to obtain a continuance and that F was using the SSCRA as a delaying tactic to slow down the judicial process and frustrate a prompt decision.

The appellate court, reviewing these facts, pointed out that F absence from the second hearing was solely due to his military service and that there was nothing in the record to show that his absence was otherwise; given the nature of the hearing, that his absence was prejudicial to him; that the father had shown good cause for his absence and prejudice to his defense; and held that **the trial court abused its discretion in denying F’s SSCRA stay** and continued the contempt and modification hearings.

Hibbard v. Hibbard, 230 Neb. 364, 431 N.W.2d 637 (1988). –Deployment Case; No SSCRA Proof by SM Parent as well as Bad Conduct of SM Parent.

Trial court found that the SM-father (F), who had custody of the three children in the divorce decree, had denied the mother (M) adequate visitation and that this was a change of circumstances sufficient to grant custody to her. Noting that the F made little showing for a stay other than alleging in his motion that he was in the armed forces on active duty in England and claiming that a failure to stay the hearing would create a disadvantage to him, the court stated that **F had not presented any competent factual evidence in support of his stay request. A mere showing that the SM-parent is on active duty is not sufficient to obtain a stay.**

Williams v. Williams, 552 So.2d 531 (La. App. 1989). –Modification of Support/Visitation Case; Good SSCRA Proof by Overseas SM Parent; Bad Conduct by Non-SM Parent.

Parties separated in Germany, mother (M) taking child back to Louisiana with her to live. M, five months after an uncontested divorce that awarded custody to her, filed a request for an increase in child support, for

a restriction on father’s (F) visitation rights to the continental United States (CONUS) and for a restraining order stopping the father from removing their three-year-old child from the United States. F responded with a SSCRA stay request, citing his ability to answer and defend was prejudiced by his military duties in Germany; that, as a result of his location he: was impaired in obtaining counsel to represent him; was financially unable to hire an attorney or come to Louisiana to defend himself; had no leave; had substantial debts; and had already incurred travel costs in coming to Louisiana from Germany three times in the previous year for litigation purposes. He asked that the proceeding be stayed until about a year later, when he was scheduled to be transferred back to the United States.

The trial judge appointed an attorney for the absent F, then denied F’s requested stay. As to M’s visitation restriction, it found that M was merely trying to clarify the divorce judgment regarding restricted visitation, and granted the requested restriction although M did not plead the necessity for restricting F’s visitation to CONUS. As to her child support request, it found F’s appearance was unnecessary since it had reviewed F’s answers to interrogatories regarding monthly income and expenses and more than doubled his child support. [*But he was not prejudiced by not being able to be present!?*].

Reversing the trial court, the appellate court found that F had exhausted his available leave in his three prior trips related to the domestic litigation; M had filed her motion to increase child support and restrict visitation a mere five months after the rendition of the divorce judgment; the hearing on the motion was held only one month after its filing [*That’s Louisiana due process or was it a locomotive???*]; F had been cooperative in the litigation and had not sought to obtain an unreasonable delay due to his military service. Thus, on the facts before it, the appellate court also found that it did not appear to it that F’s SSCRA stay request was ill-founded or filed solely for purposes of delay. The appeals court also found that the child support and visitation restriction issues alleged by M were significant issues concerning the F’s parental rights and responsibilities. It did not go without notice to the court that M was “seeking to nearly triple [F’s] child support obligation a mere five months after the consent judgment was entered.” The court also held that F’s testimony was “crucial evidence” on the restrictive visitation issue, and that the trial court’s CONUS only visitation by F would effectively deny him visitation since he had no more leave.

Ex parte K.N.L., 872 So.2d 868 (Ala.Civ.App. 2003). – Recall/Mobilization Case; Bad Conduct of SM Parent.

The mother (M) and father (F) of the child had never married, but had lived together for the first six years of the child’s life in Alabama. The mother, an army Reservist, moved to Pennsylvania in 1999, but the child, by agreement of the parties, remained in Alabama, where he lived with F during the school year; the child lived with M during the summers. In May 2000, M executed a power of attorney (probably a Family Care Plan (FCP) designation, although the opinion does not say so) in favor of F giving him “guardianship” of the child in the event her reserve unit was recalled to active duty. When F filed a custody petition in May 2002, followed by the girl’s departure to live with M for the summer months as they had agreed, it should have come as no surprise to anyone that the child was not returned to dad at the end of the summer for school. Instead, mother, after filing a motion to extend the date for filing her answer, filed a limited appearance and motion to dismiss F’s custody petition on the grounds that Alabama did not have personal jurisdiction over her. When that failed, she refused to allow F to see the child and moved to challenge his paternity. When her paternity tissue-testing issue was dismissed based on *res judicata* grounds, mom dropped “the bomb”—her Army Reserve unit was mobilized to depart for Iraq on February 10, 2003. F’s motion for *pendente lite* custody was heard amid allegations that the mother’s unit had been activated. The mother, of course, moved to stay the *pendente lite* proceeding until she returned from her overseas assignment. The judge denied the stay and granted temporary custody to F. M appealed. The Alabama Court of Civil Appeals stated that, **when a military parent requests a stay of proceedings in a custody or visitation case, “the trial judge should consider the impact of such a stay on the other parent’s right to visit and communicate with the children.”** The court concluded that the SSCRA is not to be used **“as a vehicle of oppression or abuse.”** The courts should not allow SM-litigants to take advantage of it, since it was enacted to protect SMs, but was not to be employed unjustly.

In re Marriage of Grantham, 698 N.W.2d 140 (Iowa 2005). – Recall/Mobilization Case; Family Care Plan appointment of SM’s mother; Bad Conduct of SM Parent.

The SM-father (F), a member of the Iowa National Guard, had been awarded custody of the parties’ two children in their divorce. Upon the F’s unit’s call to

active federal service, he advised the children’s mother (M) that he was going to leave them with his mother, the children’s grandmother (GM). M objected to this arrangement and discussions ensued between F and M about the children’s living arrangements during F’s absence. F reviewed his FCP in consultation with his attorney that provided that the children would be cared for by GM. This discussion was followed by a meeting with M and her attorney during which an agreement was reached that M would have temporary custody of the children during F’s absence on active duty. After the agreement was typed up, F told M that he was refusing to sign it and that GM would have the children in his absence pursuant to his FCP and that M would have possession during his absence only as provided in their divorce decree. A temporary custody proceeding ensued where F, now on active duty, requested a SSCRA stay (proceeding filed in 2002) “until he returned to a civilian status.” The stay was denied and the case proceeded with the trial court, in F’s absence, entering a temporary order appointing M as temporary custodian, suspending her child support obligation and ordering F to pay M child support. Although F was on active duty until a week following the hearing on M’s petition for a permanent change of custody, F was present at the hearing. The trial entered a custody order that awarded permanent custody to M. On appeal, the appellate court discusses the problem of noncustodial parents and the lack of knowledge of a SM’s FCP or who it designates until after its implementation or plans for its implementation are taking place and that “by the time the noncustodial parent can challenge the [FCP], the proceedings to do so are subject to the [SCRA] stay. **We are unable to agree that the SSCRA is so inflexible that it precluded the district court from determining a matter of immediate importance concerning the temporary custody of these children.**” [Emphasis added.]

The court further said that, as to the temporary custody hearing, the F’s did not demonstrate how his presence at the hearing would have changed the result since “[a]s parent and joint custodian of the children, her claim to temporary custody was clearly superior to that of [GM].” The court found that F had attempted to conceal his FCP arrangement for GM’s custody of the children until it was too late for M to seek judicial relief before he was called to active duty and that **to allow F to continue the temporary proceedings until after his return to a civilian status would have been a serious denial of M’s rights.**

As an aside, as a reason for the permanent change of custody to M, the court found that F practiced a “persistent patter of conduct that has served to diminish the children’s relationship with their mother.” Thus, the facts of this case before SM’s his active military service, as well as his actions at the time of his call up, dictated, in part, his ultimate permanent loss of custody to M.

SCRA Cases

Lenser v. McGowan, 358 Ark. 423, 191 S.W.3d 506 (Ark. 2004). – Deployment Case; Bad Conduct of SM Parent.

The mother (M) and father (F) were married, but separated. F was an active duty service member and, pursuant to the parties’ agreement, had the child for about ten days at the end of 2003, just before his return to Ft. Hood, Texas in preparation for his unit’s deployment to Iraq. There was not a divorce proceeding on file and no custody order in place. Rather than returning the child to M, with whom she had lived since the parties’ separation in November 2003, he gave her to his mother, the paternal grandmother (GM). The trial court entered a temporary custody order in favor of M but stayed the remainder of the case based upon F’s SCRA stay petition until his return.

The F and GM argued that the stay was automatic and prevented entry of a temporary custody order. The Supreme Court of Arkansas, considering the case pursuant to an extraordinary writ application, first defined what a “stay” is, noting that a stay does not deprive a court of jurisdiction, but holds all or part of an action in abeyance, freezing its proceedings, or a particular phase of it, at a particular point. Noting that the order in which a court acts on or considers a stay and a temporary custody order – which is considered, acted upon or entered first, and which second – is immaterial, the court stated that **a SCRA stay does not freeze a case, leaving it in limbo indefinitely and allowing no authority for the trial court to act.** Rather, the court said that **a trial judge may properly entertain the issue of temporary custody, even if a stay is in place when the issue is considered.** A child’s life cannot be put in suspended animation awaiting the return of the SM-F to proceed with the case on the merits; the trial court also has jurisdiction to consider support, custody and other similar issues that come up during the course of the stay. [Analogous to a Texas court applying Tex.Fam.Code §§153.001-.002.] The court’s actual holding was that the SCRA “provides a stay of the domestic relations

case but did not prevent the circuit court from entering a temporary order of custody.”

Diffin v. Towne, 3 Misc.3d 1107(A), 787 N.Y.S.2d 677 (N.Y.Fam.Ct., 2004, unpublished). – Recall/Mobilization Case; Family Care Plan Appointment of SM’s Husband and SM’s Mother; Bad Conduct of SM Parent.

The SM-M urged the court to find that a stay of proceedings barred the entry of a custody order, even on an interim basis, and that M’s new husband should take care of the child of her former marriage, despite the fact that F shared joint custody with her.

The court, in its opinion, reminded the parties that **a stay of proceedings was simply intended as a shield to protect SMs, not as a sword with which to deprive others of their rights. In the absence of extraordinary circumstances**, such as abandonment, unfitness or persistent neglect, **the court must grant custody to the other parent** in a case such as this **when the primary custodian cannot fulfill her custodial duties.** Finding no such disqualifying circumstances, the court swept aside M’s argument that her new husband should take care of the child pending her return from an indefinite mobilization period, stating that “...the step-father has no legal or moral obligation to support the child, has no legal ability to obtain medical care for the child, and has no legal ability to inquire as to the education of the child.”

The Court stated it is not in the child’s best interest to leave the child with a step-parent until such time as M is able to proceed, and the law requires the Court to enter a temporary order pending the trial of this action. [Analogous to a Texas court applying Tex.Fam.Code §§153.001-.002.]

Lebo v. Lebo, 886 So.2d 491 (La.App., 2004). – Recall/Mobilization Case; Family Care Plan appointment of SM’s Wife.

Although this court discusses the SSSCRA and SCRA stay provisions in a footnote, it is actually not a SSCRA or a SCRA case. The court notes that the SM-father was entitled to request the SCRA’s 90-day mandatory stay and then discretionary stays thereafter, but also states that the SM-father chose not to use the SCRA stay provisions to abate the proceedings, deciding instead to hire counsel and proceed with the litigation.

This case is relevant to our discussion of the issue of temporary custody in a recall/deployment situation,

however, since the SM attempted to use a power of attorney (apparently a guardianship power of attorney executed as part of his military Family Care Plan (FCP)) to give custody to his wife, the child’s stepmother. The trial court upheld the SM’s transfer of custody to his wife by virtue of the power of attorney. The court of appeals reversed the trial court and remanded for a hearing to determine temporary custody of the minor child, stating that **a parent who has primary custody** (denominated here the “domiciliary parent”) **may not unilaterally change custody; the power to modify a custody order belongs to the courts.** [*Analogous to a Texas court applying or invoking* Tex.Fam.Code §§102.003—.007.]

SCRA and Proceeding with Case in SM’s Absence.

In some circumstances, it is appropriate for a court to allow a proceeding to go forward in the SM’s absence, particularly when the SM’s presence is not necessary for the performance of a court’s ministerial duty, such as the entry of an order in conformity with a court’s prior ruling or entering a decree or order in conformity with the party’s Mediated Settlement Agreement or conducting a hearing on a motion for summary judgment. *See also synopsis of In re Marriage of Grantham, supra* above for holding that temporary change of child custody to other parent can proceed without SM’s presence since result of temporary change to M from SM-F was only temporary during SM’s absence due to his military service. But remember this case was decided prior to the current version of the SCRA.

Additionally, if the SM is represented by legal counsel and the work incident to litigation (or appeal) does not require SM’s presence or assistance, although protected, his request for a SCRA stay may be denied. For cases supportive of this view of the application of the SCRA, these SSCRA cases may be illustrative and/or may assist the practitioner in the resolution of their particular issue that may not or does not require the physical presence of the SM: *McAllister v. Samuels*, 857 S.W.2d 768, 774 (Tex.App.—Houston [1st Dist] 1993, no writ); *Rosenthal v. Smith*, 35 Ohio Law Abs. 629, 42 N.E.2d 464 (1942). *See also Shelor v. Shelor*, 383 S.E.2d 895 (Ga. 1989) (temporary modifications of child support, in general do not materially affect the SM’s rights since they are interlocutory and subject to modification); *Massey v. Kim*, 455 S.E.2d 306 (Ga.Ct.App. 1995) (SM’s request for stay of proceedings pending discovery until completion of his overseas tour denied, the court pointing out improvements in modern

communications since the passage of the SSCRA); *Keefe v. Spangenberg*, 553 F. Supp. 49 (W.D. Okla. 1981) (SM’s request to delay discovery on basis of SSCRA denied, the Court indicating he could appear by video tape deposition); *In re Diaz*, 82 B.R. 162, 165 (Bankr. Ga. 1988) (“Court reporters may take depositions in Germany, including videotape depositions, for use in this country”).

Additionally, think about coordinating the taking of the SM’s telephonic and/or video deposition and/or arranging for the SM to be able to testify in court by telephonic and/or video conferencing. Cell phones are prolific in this day and time and are in use in some areas of declared combat zones and are even more readily available in OCONUS non-combat areas of operation. Arrangements can even be made to have shipboard facilities made available in some cases. The use of current technology is a two-edged sword and can be used by the SM as well as against him.

SCRA and Abatement of Legal Proceedings Generally

This topic was addressed last year in the author’s presentation at the 31st Advanced Family Law Course. The reader is referred to the paper for that Course entitled “Servicemembers Civil Relief Act and Amended New Benefits.” It is available from the SBOT CLE department either online or in printed version. Generally, however, the SM is, upon receipt of orders, entitled to an automatic stay upon presenting proof that his recall to active duty and/or his receipt of deployment/PCS orders in the performance of his military duties materially affect his ability to participate in the pending legal proceedings. The SCRA stay is available irrespective of whether the forum is a court of record or not, irrespective of where in the court system the case is, that is whether it is in a trial or appellate court, and irrespective of whether the SM is a plaintiff/petitioner or a defendant/respondent. The stay may also apply to his dependents as well depending on the type of case. Beyond this brief synopsis, refer to and review “Servicemembers Civil Relief Act and Amended New Benefits” from the 31st Advanced Family Law Course.

Deployment by SM, but Custody Remains with SM; SSCRA nor SCRA an Issue.

Although the following case is not a SSCRA or SCRA case, it is a deployment by the SM on an unaccompanied tour where he retains custody with the children being provided for during his absence by his current wife over the motion and request of the

children’s mother. The case clearly turns on the facts proven and shows the practitioner the importance of proving the facts of their case if representing the SM.

In re Marriage of Rayman, 273 Kan. 996, 47 P.3d 413 (2004).

SM-father (F) was awarded physical custody of his two children in his divorce from M, who had joint custody with F. F remarried; his new wife (W) developed a good relationship with the children.

In anticipation of F’s upcoming one-year unaccompanied tour of duty in Korea, M moved for temporary custody during F’s tour in Korea. At trial, F testified that he was planning to leave the children with W and that he would take 30-days’ leave in the middle of his year in Korea. Additional testimony by F and W addressed not changing the parenting techniques already in place with the children, about how W had been a primary caretaker with F for them for the past several years, and how she was a stay-at-home mom who had a strong relationship with the children.

M, on the other hand, testified, she was soon to be medically retired from the Army, that she planned to attend school in Tennessee, that her current husband would not join her in Tennessee until about 10 months later, and that she knew about a possible hardship tour for F when she agreed to his being the primary physical custodian of the children.

The trial court retained custody with F, despite his planned absence, but provided liberal visitation for M.

Responding to M’s argument that the trial court’s ruling was a violation of the parental preference doctrine and a grant of custody to W, the Kansas Supreme Court held the contest was between M and F, that F had won, and that:

Each situation involving military families has distinct differences, as do the facts of temporary changes which relate to nonmilitary custodial relationships. The temporary transfer of the parent with residential custody must not automatically trigger a custody change. We reject... [M’s] argument that the parental preference doctrine was violated by the trial court’s ruling under the facts of this case. Custody is an issue to be determined on a case-by-case basis as the trial court did here.

Id. at 1001, 47 P.3d at 416.

LOCATING A SERVICE MEMBER

A problem often faced by a petitioner/plaintiff is the problem of locating and serving the SM respondent/defendant. There are several methods of locating where the SM is stationed and whether or not he is deployed OCONUS. One method is to contact the Worldwide Locator for the SM’s branch of service. These can be accessed online at the following addresses:

- ✓ DOD:
<http://www.defenselink.mil/faq/pis/PC04MLTR.html>.
- ✓ Army: <http://wwl.erec.army.mil>. Usage is limited to those on a .mil or .gov domain.
- ✓ Marine Corps:
<http://www.usmc.mil/marinelink/ind.nsf/locator> or.
- ✓ Navy:
<http://www.npc.navy.mil/CommandSupport/NavyWorldWideLocator/>.
- ✓ Air Force:
<http://ask.afpc.randolph.af.mil/main>, then click on AFPC Reference dropdown menu to get the Worldwide Locator.
- ✓ Coast Guard:
<http://www.uscg.mil/hq/cgpc/Home/locator.html>.

The foregoing Service Branch websites are official government websites. The following “public” or “commercial” websites may also be helpful, if not more helpful, in locating the SM you want to locate and/or serve, in addition to other “locator” websites you can find on the above listed government websites:

www.militarysearch.us – This site is owned and run by Randy S. Forschner, President of CommercialCreditor.com. He reports in an email to me about his company’s search and locator services as follows:

“Most everything you need to know about our service is right on the website. We provide our service to law firms and active duty individuals. We are a National company which offers this specialized service as well as others at a sister site <http://www.militarysearch.us>.

“Although the information provided is FIOA, the mechanism we have put in place, ensures that the documents are proper, presentable and will be accepted by any court in the country. We also enforce "Due Diligence and inspect all orders. We reserve the right to refuse orders as we see fit and refer "speculative" requests as well as intrusions to FBI New York.

“Additionally, beyond quality control, we have a long term established relationship with members of the DOD and our clients enjoy a "we're here to serve you" attitude.

“The cost of the basic MSA is \$7.50, and you must provide a SSN (for exact match) or Date of Birth. An MSA Plus is \$57.50, if you have no identifying information.”

Other locator services that can be accessed by “googling” the words “worldwide locator.” Among the “military” sites found there in addition to the foregoing service branch sites are:

- <http://www.spiesonline.net/military.shtml>
- http://www.militarypartners.com/Links/Armed_Forces/Reserves/Locator.asp
- <http://usmilitary.about.com/cs/locatorservices/ht/locateaf.htm>
- <http://www.angelica.dds.nl/findsoldiers.htm>
- <http://www.globemaster.de/faq/locator.html>
- <http://canberra.usembassy.gov/dao/veterans-affairs.html>
- <http://www.Military.com>
- <http://www.MilitaryConnections.com>
- <http://www.VetFriends.com>

This author makes no representation as to the quality of any of the services provided by any of the aforementioned sites.

SERVING THE SM

Serving the SM on Post/Base/Station in CONUS

Service on the SM in CONUS is usually not a problem. If the SM lives aboard a Post, Base or a Station, your process server should already know how to effect service upon him. However, the simplest way is to go to the Provost Marshal’s office on an Army Post or Base Security on an Air Force Base or Naval Station or Marine Corps Camp and request their

assistance, and it will usually be provided by them calling the SM to their office to receive the citation.

Of course, you can also personally serve him wherever you find him off-Post, as well as by substituted service and/or by certified mail, if authorized.

Serving the SM Overseas

When trying to serve a SM overseas, first determine if the country where he is stationed and/or physically located is a signatory to the Hague Convention or not. If he is stationed in Germany, for instance, you can only serve him by complying with the rather detailed and lengthy process mandated by the Hague Convention. In general, Hague Convention member countries include all of the Common Market Countries, Japan, Australia, South America, etc. The Hague Convention procedures for service of process can be located on the web at http://travel.state.gov/law/info/judicial/judicial_686.html (U.S. State Department Judicial Assistance Website);

<http://www.hagueservice.net/homepage.html> (U.S. Central Authority Website); <http://www.legallanguage.com/llsprocess.htm> (a commercial service of process website). These were obtained by “googling” “service of process & hague convention.”

Since June 1, 2003, PFI Process Servers (PFI) has been acting on behalf of the United States Central Authority, US Department of Justice (USDOJ), under Contract # 03-C-0655. PFI’s contract authorizes it to manage all formal service of process for the U.S. on judicial documents under the following treaties and conventions: Hague Service Convention, Inter-American Convention, and Letters Rogatory.

If the country where the SM is stationed is not a member country, you may be able to serve the SM pursuant to Tex.R.Civ.P. 106 substituted service methods. Two non-member countries where many SMs are deployed are Iraq and Afghanistan. You may even be able to obtain service on the SM in non-member countries by certified mail from the District Clerk. You may also obtain a civilian process server on the overseas base, but the person would probably have to be an American citizen that otherwise qualifies for appointment under Rule 106. **CAVEAT:** Check with the U.S. Embassy or Consulate there before having a local civilian appointed to ensure “good service.” You will also want to ensure that the “service” on base is not in violation of an order of that particular military base. Another method might be

confirmed personal delivery by Federal Express, UPS, Airborne, etc. or by email to the SM at his official email address. However, you should be able to prove your email service with confirmed read receipt and not just an indication that it was “displayed” on the recipient’s computer. It can be displayed “as spam” and never opened and read, so that it will be difficult to prove “notice” without the “read” receipt in the opinion of the author.

The following is an excerpt from page 9 of Brian Webb’s paper entitled *International Issues and the Hague Convention* presented at the 31st Advanced Family Law Course in Dallas in August 2005 that may also be helpful. His article was primarily addressed to child abduction and custody issues involving children and/or a parent located in a foreign country, but is equally informative in this context as well.

The State Department’s guide, "The Foreign Service Family and Divorce" offers various options for obtaining proper service when a spouse is at post abroad:

1. If the location has an APO/FPO facility, a registered letter may be sent. If not, an international registered letter will suffice.
2. Countries that are parties to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 28 U.S.C.A. 1977, will have a Central Authority that can complete service of process. The Inter-American Convention of Letters Rogatory and Additional Protocol is another treaty addressing service of documents. Please note that as of June 1, 2003 the United States is now employing a private contractor, Process Forwarding International of Seattle, Washington, to handle requests under the Hague and Inter-American Service Conventions, as well as requests from countries not party to either treaty. This process server will have the exclusive authority to act on behalf of the United States in transmitting outgoing requests for service of process in foreign countries. For more information on the Hague Conventions and Inter-American Service Conventions, please access [http://www.travel.state.gov/judicial assistance.html](http://www.travel.state.gov/judicial_assistance.html).

3. If a country is not a party to the Hague Convention or Inter-American Convention,

your client may need to explore hiring a local attorney or an attorney’s agent to serve the documents. The State Department notes that the foreign attorney can make an affidavit of the service before a local notary or at the American Embassy or Consulate. Please be advised that some countries do regard this type of service of process to be illegal. Please see <http://www.travel.state.gov/retainforeignattorney.html> for more information.

4. Another option for service of process abroad is a letter rogatory. A letter rogatory is a letter of request from a U.S. court to a foreign court requesting international judicial assistance, authorized by Tex. R. Civ. P. 201.1. These can serve as formal requests for service of process in countries that prohibit service of foreign court papers. The State Department notes that this process may be overly time consuming to be beneficial. For one thing, the request and all documents accompanying it must be translated into the official language of the country to which the request is directed. The cost is \$500. Clearly, this option is a last resort for service of process, but it is out there to aid those challenged by foreign jurisdiction problems. For more information on letter rogatory, please see <http://www.travel.state.gov/lettersrogatory.html>.

Thus armed with this panoply of information, you may be able to obtain service of process on your overseas SM.

BENEFITS OF RECALLED RESERVISTS

Although an attempt is made to cover all of the benefits that a Reservist/National Guardsman will receive upon his recall/call to active duty, a very good overview of many benefit areas will be found in the article by Capt. Thomas L. (Tom) McAtee, USNR (Ret.), that was published in June 2004 edition of the *NRA News*, a monthly magazine published by Naval Reserve Association, 1619 King Street Alexandria, VA 22314-3647. The article is attached to this paper as Appendix G.

MILITARY HEALTH CARE

Upon recall to active duty, regardless of whatever health care coverage the SM’s dependents had, they are now covered by TRICARE. TRICARE coverage

information can be obtained by accessing <http://www.tricareonline.com/> and/or <http://www.mytricare.com/internet/tric/tri/tricare.nsf>.

To be covered by TRICARE, however, the individual dependent must be registered in the DEERS system, which is accomplished upon their issuance of a Dependent’s ID card. The following information on registration in DEERS was found online at <http://www.tricare.osd.mil/deers/default.cfm>:

DEERS is a computerized database of military sponsors, families and others worldwide who are entitled under the law to TRICARE benefits. DEERS registration is required for TRICARE eligibility.

- Active-duty and retired service members are automatically registered in DEERS, but they must take action to register their family members and ensure they are correctly entered into the database.
- Once registered in DEERS it is important to keep your DEERS records updated when personal eligibility information changes. This includes changes in military career status; addresses; and family status (marriage, divorce, birth, and adoption) etc. For basic information on eligibility, review our Eligibility Fact Sheet.
- Mistakes in the DEERS database can cause problems with TRICARE claims, so it is critical to maintain your DEERS information.
- Retail network pharmacies check TRICARE eligibility through DEERS. Prescriptions will be filled only for beneficiaries who are listed as eligible in DEERS.
- Each family member’s eligibility record must be updated separately when changes occur.

Registering Your Child in DEERS

Parents and legal guardians must register their newborn or newly adopted child in DEERS as soon as possible after birth or legal adoption. For information regarding registering your child in DEERS please view the Newborn Enrollment Fact Sheet. [When at this site, click on the hyperlink to get this information.]

There are two kinds of TRICARE coverage, TRICARE Standard and TRICARE Prime.

TRICARE Prime

From the TRICARE website, you will learn that Prime is TRICARE's managed-care option, similar to a civilian HMO (health maintenance organization). All active duty service members (ADSM) are required to be enrolled in Prime, but there is no cost to the ADSM. They must take action to enroll by filling out the appropriate enrollment form and submitting it to the regional TRICARE contractor.

Prime is also available to other TRICARE beneficiaries, such as retirees, but they must choose to enroll in Prime. If a TRICARE beneficiary does not enroll in Prime, they are automatically enrolled for coverage under TRICARE Standard. Prime enrollees receive most of their health care at a military treatment facility (MTF) where their care is coordinated by a primary care manager (PCM). Prime is not available everywhere, but a beneficiary can determine where it is available from accessing the TRICARE website or by calling a TRICARE representative at the nearest MTF.

Prime enrollees must also follow some well-defined rules and procedures, such as seeking care, first, from the MTF. For specialty care, the Prime enrollee must receive a referral from his/her PCM and authorization from the regional contractor. Failure to do so could result in costly Point of Service (POS) option charges. Emergency care is not subject to Point of Service option charges.

Prime is also available for ADSMs and their families in distant U.S. locations: TRICARE Prime Remote is the program for service members and their families who are on remote assignment, typically 50 miles or more from a military treatment facility (MTF).

Prime is also available for active duty and families overseas: The TRICARE Overseas Program delivers the Prime benefit to ADSMs and families in the three overseas areas, Europe, the Pacific, and Latin America/Canada. The TRICARE Global Remote (TGRO) program delivers the Prime benefit to ADSMs and families stationed in designated "remote" locations overseas.

TRICARE Standard

TRICARE Standard allows the retired SM and his family greater flexibility in provider selection, but it also requires the retiree to pay a greater share of the cost of the services for that flexibility privilege. Generally, if the provider is TRICARE-certified/authorized, the retiree must pay co-payments

and deductibles; the deductibles are 25% of the amount charged and/or approved by TRICARE. That is, if the provider is “certified/approved,” the retiree will pay 25% of the amount not required to be written off by TRICARE. The retiree and his dependents will pay this deductible up to an annual “catastrophic cap” per year (\$1,500.00 for a single retiree and \$3,000.00 for the retiree and his dependents), with the “coverage year” commencing on the retiree’s birthdate annually. Once the catastrophic cap is reached, TRICARE will pay 100%. Coverage under Standard may also require the retiree to file his own claims, especially if the provider does not “take TRICARE” or is not TRICARE-certified/approved. Many physicians will not take TRICARE patients due to the low amount TRICARE pays for services, which, in many instances, is lower than Medicare. This is a recurring issue with military retiree lobbying organizations.

Prescription Benefits

Another significant health care benefit for a recalled SM and/or a retiree covered by TRICARE is the pharmacy program. Most prescriptions can be filled at any accredited pharmacy for either \$3.00, \$9.00 or \$22.00 for a thirty-day dose, depending on the prescription medication. Additionally, the SM can obtain his recurring prescriptions from the mail order pharmacy service and obtain a ninety-day dose for the same thirty-day price and have it delivered right to his door by the U.S. Post Office.

TRICARE Dental Benefits

The SM upon recall can register to have his dependents covered for dental benefits through the military dental insurance contractor. He, of course, is covered and can obtain dental treatment by military dentists. The following information about the TRICARE Dental program, as well as more specific and detailed information can be found at <http://www.tricare.osd.mil/dental/default.cfm>:

TRICARE Dental Program. The TRICARE Dental Program (TDP) is offered by the Department of Defense (DOD) through the TRICARE Management Activity (TMA). United Concordia Companies, Inc., administers and underwrites the TDP for the TMA. The TDP is a high-quality, cost-effective dental care benefit for eligible

family members of all active duty uniformed services personnel; as well members of the Selected Reserve and Individual Ready Reserve (IRR) and their eligible family members.

TRICARE Retiree Dental Program. The TRICARE Retiree Dental Program (TRDP) is offered by the Department of Defense (DOD) through the TRICARE Management Activity (TMA). The Federal Services division of Delta Dental Plan of California, located in Sacramento, California, administers and underwrites the TRDP for the TMA. The TRDP offers comprehensive, cost-effective dental coverage for uniformed services retirees and their eligible family members.

The cost of the program for dependents of SMs can be located at http://www.tricare dental program.com/tdptws/enrollees/premiums/activeduty_premiums.jsp, from which the following information was obtained:

Premium Amounts

Your TDP premium amounts change annually on February 1st.

The following chart indicates your **monthly** premium responsibility as an ADFM for enrollment years Feb. 1, 2006 through Jan. 31, 2007 and Feb. 1, 2007 through Jan. 31, 2008.

Premiums are paid on a monthly basis. They must be paid in full. There are no circumstances when a partial premium can be paid. If you fail to pay your premiums during the mandatory 12-month enrollment period, the Government will not pay any portion of the premium for the remaining months. United Concordia will collect the full amount—Government and member portions—of any remaining premium due for the 12-month enrollment period from you. Failure to pay the required premiums may result in referral of the account to a collection agency.

Plan	Enrollment Year	
	Feb. 1, 2006 – Jan. 31, 2007	Feb. 1, 2007 – Jan. 31, 2008

Monthly Single Premium (one family member)	\$10.51	\$11.05
Monthly Family Premium (more than one family member)	\$26.27	\$27.63

EDUCATIONAL BENEFITS

There is an education benefit available to certain reservists who were activated for at least 90 days after September 11, 2001 and is called the “Reserve Educational Assistance Program” (REAP) or Chapter 1607. General information on REAP is available at <http://www.gibill.va.gov/>.

There are other educational benefits available to the recalled and/or active duty SM while on active duty. There are various college level courses offered on-base as well as by correspondence. This article will not begin to address those, but the SM can contact the appropriate personnel on-base to learn the requirements and/or the service commitments associated with availing himself of these educational benefits.

Additionally, an out of state resident who enlists in one of our State military forces can attend college in the State of Texas and will not have to pay out-of-state tuition, not to mention having other education cost benefits associated with their membership in one of our State military forces. Tex.Educ.Code §54.2155(b) provides that “[a]n institution of higher education shall exempt a person certified by the adjutant general as described by Subsection (a) from the payment of tuition for the semester credit hours for which the person enrolls, not to exceed 12 semester credit hours. If the person is not charged tuition at the rate provided for other Texas residents, the amount of the exemption may not exceed the amount of tuition the person would be charged as a Texas resident for the number of semester credit hours for which the person enrolls, not to exceed 12 semester credit hours.” “State military forces” is defined to mean the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law, and “Texas National Guard” means the Texas Army National Guard and the Texas Air National Guard. Tex.Govt.Code §431.001. Specific requests for information, however, should be addressed to a Texas National Guard recruiter.

Another educational benefit afforded to an active duty SM, as well as to members of the Texas State Guard (state military forces) or a reserve component of the

armed forces, who is ordered to active duty by proper authority is that the school district in which they reside is required to provide their free prekindergarten classes to their children. This benefit is also extended to the children of SM’s who have been injured or killed while serving on active duty. The school district is only required to perform this service, that is, provide tuition free prekindergarten classes, if it identifies fifteen (15) or more eligible children who are at least four (4) years of age (may offer the service for children who are at least three (3) years of age). Tex.Educ.Code §29.153.

BENEFITS UPON DEATH OF AN ACTIVE DUTY SM

The following is edited from two articles prepared by Capt. Thomas L. (Tom) McAtee of the Naval Reserve Association entitled *It’s Inevitable . . . Have You Prepared Properly?* and *When Something Bad Happens* and were published in the November 2005 and May 2003 editions, respectively of *NRA News*, respectively. The former article, his more recent version of it, is attached in its entirety as Appendix H.

Social Security Administration (SSA) Notification and Benefits

The death of an individual, whether a Social Security recipient or wage earner, has implications regarding the Social Security Administration (SSA). The death should be promptly reported by calling the SSA toll free at 1-800-772-1213. This initial call will start the process of information and filing guidance for benefits. Additional information can be found at the SSA Web site at www.ssa.gov. A Lump Sum Death Benefit of \$255.00 is payable, upon filing, to the surviving spouse or eligible child. No payment is made to adult children.

Department of Veterans Affairs (VA) Benefits

The VA provides an array of benefits for deceased veterans and eligible surviving family members. Insofar as entitlement to VA benefits is concerned, most military retirees are veterans. VA benefits are exempt from federal income taxation. Certain burial-related benefits are provided such as burial flags, government-issued markers, and memorial

certificates. Additionally, VA operates a system of national cemeteries in which eligible veterans may be interred, inurned, or have a marker placed as a memorial. A DD214, retirement orders, or discharge paper is required to obtain any VA benefit.

Burial in National Cemeteries

Burial in a national cemetery is an entitlement for veteran retirees, and includes opening and closing of the grave and perpetual care. The only other casketed burials that can be accommodated at some national cemeteries are those of spouses or dependent children of veterans already buried in the cemetery. If an eligible family member dies first, the member must sign an agreement to be buried in the same grave eventually. Grave sites cannot be reserved. Most cemeteries can accommodate burials of cremated remains. Contact the Director of the National Cemetery where burial is desired. The local VA office has a list of national cemeteries or go to www.va.gov or call 1-800-827-1000. Arlington National Cemetery, however, has stricter eligibility requirements than any other national cemetery.

Burial Flags

An American flag is available to drape the casket of a veteran who was discharged under conditions other than dishonorable. Commonly, funeral directors obtain the flag on behalf of the survivors if the deceased is an eligible veteran. A flag may also be issued for memorial purposes to close relatives other than widow(er) or child(ren).

Grave Markers

When a veteran is buried in a national, state, or military cemetery, a marker is erected, without cost to the family, upon completion of an application by any surviving family member. The permanent monument may be an upright headstone, flat bronze, granite, or marble marker, or a bronze niche marker. Standard inscriptions include name, branch of service, year of birth and death. Optional inscriptions include rank or rate, month and day of dates of birth and death, valor awards, religious emblem, and war service. Inscriptions listed above are free, but additional inscriptions are at personal expense. For specific information, call 1-800-697- 6947 or write:

Office of Memorial Programs (403A)
 National Cemetery System
 Department of Veteran’s Affairs
 810 Vermont Ave, NW
 Washington, DC 20420

When burial is in a private cemetery and a marker is desired, VA Form 40-13 30 (obtained from any VA office) must be filled out completely by the spouse or closest relative and mailed to the address in this paragraph. The marker will be shipped free to a designated cemetery.

A memorial marker to be placed in a veteran’s national, state, military, or private cemetery to commemorate a veteran whose remains were buried at sea (by own choice) or scattered without interment, may be requested via VA Form 40-1330.

Presidential Memorial Certificate

This long-standing program provides a certificate, prepared by the VA, bearing the President’s signature and expressing the country’s grateful recognition of the veteran’s service. Those eligible to receive the certificate include next of kin, relative, or friend. Certificates may be issued to more than one eligible person, up to ten (10) certificates. Request a Presidential Memorial Certificate, in person or through the mail, from any VA Regional Office. Retirement orders or a DD2 14 provide the best documentation to establish honorable service.

Plot/Internment Allowance

A \$150.00 plot or interment allowance is available in cases involving the payment of the \$300.00 non-service-connected allowance specified below.

Non-Service-Connected Death

Eligibility provisions exist for a \$300.00 burial allowance to be paid if the veteran, prior to death, was receiving a VA disability pension or compensation payments, or died while hospitalized in a VA facility.

Service-Connected Death

If a veteran dies as a result of a disability related to military service, up to \$1,500.00 may be paid to assist with burial expenses.

Dependency and Indemnity Compensation (DIC)

DIC payments are administrated by the Department of Veteran’s Affairs. Surviving spouses who have not remarried, certain children, and low-income parents of Reservists or retirees who die from:

- A disease or injury incurred or aggravated while on active duty or active duty for training.
- An injury incurred or aggravated in line of duty while on inactive duty training.
- A disability compensated by the Department of Veteran’s Affairs.

DIC payments to a surviving spouse are payable for life, as long as the spouse does not remarry. To apply for DIC, the claim form VA Form 21-534 must be submitted. Documentation to support your request for DIC payments would, at a minimum, be military medical record and any VA disability documentation. DIC payments are excluded from taxation.

Burial at Sea

Navy retirees and their dependents are entitled to burial at sea. A burial at sea decision should be in writing. If burial at sea is requested, the requestor should contact:

Office of Medical/Dental Affairs
 (MEDDEN Affairs)
 Mortuary Affairs, Bldg. 38H
 Great Lakes, IL 60088-5200
 Tel: 1-800-876-1131, ext.629
 1-708-688-2929/3950

There are also other requirements that must be complied with associated with the conduct of a burial at sea. Complete information about this benefit and the requirements to obtain it can be accessed at <http://www.chinfo.navy.mil/navpalib/questions/burial.html>.

Servicemen’s Group Life Insurance (SGLI)

The VA website, <http://www.insurance.va.gov/sgliSite/SGLI/SGLI.htm>, advises that

SGLI is a program of low cost group life insurance for SMs on active duty, ready reservists, members of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Public Health Service, cadets and midshipmen of the four service academies, and members of the Reserve Officer Training Corps.

SGLI is a benefit that automatically is afforded the SM while on active duty, although he has the very low cost premiums deducted monthly from his pay. Upon release from active duty, the SM is given the

opportunity to convert the term coverage into a civilian coverage.

The coverage afforded begins at \$50,000.00 and can increase in \$50,000.00 increments up to the current maximum coverage level of \$400,000.00. SGLI premiums are currently \$.065 per \$1,000 of insurance, regardless of the member's age.

The SM’s SGLI beneficiary designation takes precedence over all other contractual or legal provisions, including the Tex.Fam.Code §9.301, in most instances. *Ridgeway v. Ridgeway*, 454 U.S. 46, 102 S.Ct. 49, 70 L.Ed.2d 39 (1981). However, *Ridgeway* left open a claim for proven fraud. *Id.* at 58-59.

Federal Income Tax Forgiveness

The IRS has provided a small benefit for families of deceased SMs since 9/11 by forgiving all income tax they owed at the death of the SM. The deceased SM’s surviving spouse or personal representative must file the decedent’s final returns and/or claims for refund, but they will not owe any taxes. The SM must have died while serving in a combat zone or from wounds, disease, or injury sustained in a combat zone. The period covered only applies to the taxes owed for the current year and for any earlier tax year ending on or after the first day the member served in the combat zone. Any taxes withheld and/or paid will also be forgiven and refunded. This ensures that no tax liability will be imposed on the decedent’s beneficiary for taxes incurred by the SM’s income. **CAVEAT:** If the SM and spouse filed joint returns, as most do, only the deceased SM’s part of the joint return is eligible for the refund or tax forgiveness.

The documents that must accompany all returns and claims for refund are: (1) Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer, and (2) Certification from the DOD or Dept of State, which certification must include the SM’s name, SSN, date of injury, date of death, and a statement that the SM died in a combat zone or from a terrorist or military action.

Since the author is neither a CPA nor holds himself out as knowledgeable in this arena, ensure your client contacts a qualified CPA or other tax preparer to address these issues. The author has relied on an article written by LT Marc J. Soss, SC, USN, in the December 2005 issue of *NRA News* for his information.

REEMPLOYMENT RIGHTS

The last of the major “benefit rights” is that of reemployment rights. What is the recalled Reservist to do upon his release from recall in the service of his country? This topic is the subject of Federal, as well as State legislation.

FEDERAL USERRA

The **Uniformed Services Employment and Reemployment Rights Act** (38 U.S.C. 4301-4334) (**USERRA**), was enacted in 1994 to protect the rights of persons who voluntarily or involuntarily left civilian employment positions for military service. USERRA authorized the Secretary of Labor to implement the purposes of the Act. The most recent promulgation by the Department of Labor (DOL) of its final regulations to implement the USERRA occurred in December 2005. The USERRA prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual’s membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

The following explanatory interpretation of the USERRA are based upon and track another informative article by LT Marc J. Soss, SC, USN, in the February 2006 issue of *NRA News*.

Protection from Employer Discrimination and Retaliation

An Employer may not deny a SM initial employment, reemployment, retention, promotion, or any benefit of employment because of the SM’s membership or application for membership in the military service. An employer is also prohibited from retaliating against a SM because of their taking any action (testifying, verbal or written statement, or assisting in the investigation) to enforce this protection. The discrimination and retaliation prohibitions apply to all employers, potential employers, and employment positions (full-time, brief, non-recurrent, or no reasonable expectation that the employment position will continue indefinitely or for a significant period).

If discrimination or retaliation should occur, the SM has the burden of proving that a status or activity

protected by USERRA was one of the reasons that the employer took action against them. Once the SM has met this burden, the burden of proof shifts and the employer has the burden to prove it would have taken the action anyway.

Eligibility for Reemployment

A SM who has been absent from civilian employment (public or private employer in the United States) by reason of military service is eligible for reemployment under the following criteria:

- (1) Employer received notice in advance of the employee's military service;
- (2) Five or less years of cumulative military service during SM’s employment relationship with the employer;
- (3) Timely return to work or application for reemployment; and,
- (4) Not separated from service because of a disqualifying discharge or under other than honorable conditions.

The USERRA provisions also include and apply to an employer's successor in interest.

USERRA rights are not diminished when a member holds a temporary, part-time, probationary, or seasonal employment position. The employer is not required to reemploy the SM if his employment prior to his military service was for a brief, nonrecurrent period that imparted no reasonable expectation to him of continued employment. Similarly, an employee laid off with recall rights, on strike, or on a leave of absence is protected under USERRA, while an independent contractor is not eligible for protection under USERRA.

Protection against Discharge:

If the SM's period of military service was a period greater than 30 days but less than 181 days, he cannot be discharged by the employer for at least 180 days after the date of the SM’s reemployment. If the SM's period of military service was more than 180 days, he cannot be discharged for at least one year after the date of his reemployment. The SM may, however, be discharged for cause based either on conduct or the application of other legitimate nondiscriminatory reasons, such as job elimination, layoff, etc. If the SM’s employment is terminated within the protected time period, it is the employer’s burden of proof to show that the termination was for a “legal reason” and not in violation of the SM’s USERRA rights.

Notice to Employer

A SM, or an appropriate officer of the SM’s service branch, while not required to ask permission, **must notify his employer(s)** that he intends to leave his position of employment with the employer to perform military service. 32 C.F.R. 104.3. This notice may be either oral or in writing and there is no particular format for the notice.

The SM is not required to decide in advance of leaving his job with the employer whether he will seek reemployment. Even if the SM tells his employer, before entering or during his military service, that he does not intend to seek reemployment, he will still not forfeit his right to reemployment upon the end of his military service.

Period of Service:

A SM is entitled to a leave of absence for military service for up to five years with each employer. With multiple employers, a separate five-year period runs for each one independent of the other. Exceptions to the five year limit are: (1) military service required to complete an initial period of obligated service; (2) the SM employee is unable to obtain orders releasing him from the military service before the expiration of the five-year period; (3) the military service was performed to fulfill periodic National Guard and Reserve training requirements; (4) the SM was ordered to or retained on active duty; and (5) the SM employee’s military service was performed in support of an operational mission.

Application for Reemployment:

Upon completion of his military service, the SM must notify the employer of his intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. The length of the SM’s military service will determine the time by which the SM is required to report back to work or to submit a timely application for reemployment: (1) for a period of service less than 31 days, the member must report back to the employer not later than the beginning of the first full regularly scheduled work period following the completion of the military service after an eight-hour period for safe transportation home; (2) for a period of service of more than 30 days but less than 181 days, the SM must return or apply for reemployment (written or oral) not later than 14 days after completion of his military service; or (3) for a period of service of more than 180 days, the member must return or apply for reemployment (written or oral) not later than 90 days

after the completion of his military service. A hospitalized or convalescing SM must report to or submit an application for reemployment to the employer at the end of the period (not to exceed two years) necessary for recovering from the illness or injury.

An employer is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. If, however, documentation is received after reemployment that shows the SM is not entitled to reemployment, the employer may terminate the employment and any rights or benefits the SM was granted.

Character of Service:

A SM eligible for reemployment is disqualified under the following circumstances: (1) separated from the military service with a dishonorable or bad conduct discharge; (2) separated from the military service under other than honorable conditions; (3) was a commissioned officer and was dismissed from the military service by the sentence of a general court martial; or, (4) was a commissioned officer and was dropped from the military service due to an absence without authority for a period of at least three months; after a confinement adjudged by a court martial; or, after a confinement in a federal or state penitentiary or correctional institution. The SM can apply to a military review board to attempt to obtain an upgrade of a disqualifying discharge or release to entitle him to his USERRA reemployment benefit, which the board can do either prospectively or retroactively, and thereby, if the board acts favorably, the SM may then obtain reinstatement. Back-pay and other benefits (pension plan credits) are not required to be restored to such a reinstated SM.

Health Plan Coverage:

A SM covered by a health plan (insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement) must be permitted by the employer and/or the plan to elect to continue the coverage. The plan must allow the SM to elect to continue coverage for a period of time that is the lesser of: (1) a 24-month period beginning on the date the SM begins service; or (2) the date the SM begins service and ending on the date the SM fails to return from military service or fails to timely apply for reemployment. The plan criteria is as follows: (1) for periods of military service of less than 31 days, the SM may not be required to pay more than the regular employee share, if any, for health plan coverage; and (2) for periods of military service of 31 or more days of

service, the plan may not require the SM to pay more than 102 percent of the full premium under the plan (that is, the employer and employee’s share plus two percent for administrative costs).

USERRA does not require an employer to establish a health plan if there is no coverage in connection with the employment. It also does not require an employer to allow the employee to initiate new health plan coverage at the beginning of a period of military service. However, health plan coverage terminated due to military service must be reinstated upon reemployment. An exclusion or waiting period may not be imposed by the employer or the plan in connection with the SM’s reinstatement under the plan upon reemployment.

Pension Plan Benefits

On reemployment, by reason of his period of military service, the SM must be treated as not having had a break in service for purposes of participation, vesting, and accrual of pension or retirement benefits. The period between leaving service and reporting to work or applying for reemployment must also be treated as continuous service with/by the employer. If a SM is hospitalized or convalescing from an illness or injury incurred or aggravated during his military service, the time period necessary for him to recover will also be treated as continuous service with the employer for participation, vesting, and accrual of pension or retirement benefits under the employer’s plan.

USERRA covers ERISA and state, government entity, or religious organization sponsored pension plans. It does not cover the Federal Thrift Savings Plan.

An employer will not be required to make any plan contribution until the member is reemployed. Upon the SM’s reemployment, however, the employer is liable to fund any plan obligation attributable to the SM’s period of military service. In a *defined contribution plan*, the employer must allocate the amount of makeup contributions or elective deferrals in the same manner and extent that it allocated the amounts for other employees during the same period. With a defined benefit plan, the SM’s accrued benefit will be increased for the period of service upon payment of any member contributions required to be made under the plan. With a contributory plan, the member is allowed, but not required, to make up missed contributions or elective deferrals. The make-up contributions or elective deferrals must be made between the date of reemployment and the date determined by up to three times the length of the employee’s immediate past period of military service (not to exceed five years). A SM’s makeup contributions or elective deferrals may only be made during this period and while employed with the post-service employer. The employer contributions must be

made not later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service was performed.

Enforcement of the Act

Enforcement of a veteran’s rights under USERRA was somewhat hollow until last year when the U.S. Office of Special Counsel (OSC) began directly receiving and investigating certain federal sector USERRA claims. Useful information about the filing of a claim and/or enforcement of the veterans’ reemployment rights can be found at <http://www.osc.gov/userra.htm>.

TEXAS USERRA PROVISIONS

Tex.Govt.Code §431.005 and §431.006, are, basically, the Texas version of the federal USERRA. **Section 431.005** provides that state, municipality, county, or another state political subdivision employees who are also members of the state military forces (Texas State or National Guard) or a reserve component of the armed forces are entitled to a paid leave of absence from their duties when engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a federal fiscal year. During a leave of absence the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. Thus, this provision allows the SM to perform his annual duty for training without being docked vacation time.

They are also assured to be restored to the position that they held when they return from that duty.

Section 431.006 applies to a private employer and basically tracks the federal USERRA as to rights and benefits. It also specifies damages the SM injured by an employer’s violation of the SM’s reemployment rights to damages in an amount not to exceed six months’ wages at the rate the SM was earning when called to training duty or recalled, as well as reasonable attorney’s fees.

The **Teacher Retirement System of Texas, Tex.Govt.Code §823.304(d)-(f)**, has made provision for the reemployment of SMs who are recalled to active duty as well as credits and deposits to the retirement system that the SM would have made during his period of active duty service.

The **Texas County and District Retirement System, Tex.Govt.Code §842.109(c)**, provides for the reemployment of employees within its retirement

system who are recalled to active duty provided they meet the requirements of the USERRA and is reemployed by the same participating political subdivision.

MISCELLANEOUS BENEFITS PROVIDED BY STATUTE

Additional time to claim lottery prizes:

Tex.Govt.Code §466.408 allows a SM additional time to claim a lottery prize past the date of the prize’s reclamation date: for an on-line game, after the expiration of the 180th day following the draw date; and for an instant game, after the expiration of the 180th day following the official "end of game" as determined by the commission. The active duty SM may claim a lottery prize not later than the 90th day after the date on which the earliest of the following occurs:

- (1) the person is discharged from active military duty;
- (2) the person returns to this state for more than 10 consecutive days;
- (3) the person returns to nonactive military duty status in the reserve or national guard; or
- (4) the war or national emergency ends.

To be an eligible person under this provision, the person is entitled to a lottery prize who:

- (1) while on active military duty in this state was transferred out of the state:
 - (A) as a result of a war or national emergency declared in accordance with federal law; and
 - (B) before the 180th day after the date on which the winner of the lottery prize was selected; or
- (2) while serving in the reserve forces in this state was placed on active military duty and transferred out of the state:
 - (A) as a result of a war or national emergency declared in accordance with federal law; and
 - (B) before the expiration of the 180th day after the date on which the drawing occurred for on-line games or before the expiration of the 180th day following the official "end of game" for instant games as determined by the commission.

Military Service Credit Benefits for State Subdivision Employees

The Legislature has also specified military service credit benefits for employees who are recalled to active duty. These are as follows:

Employees Retirement System of Texas, Tex.Govt.Code §813.305. Military Service Credit Governed by Uniformed Services Employment and Reemployment Rights Act

Teacher Retirement System of Texas , Tex.Govt.Code §823.304. Reemployed Veteran's Credit

Judicial Retirement System of Texas Plan One, Tex.Govt.Code § 833.1031. Military Service Credit Governed by Uniformed Services Employment and Reemployment Rights Act.

Judicial Retirement System of Texas Plan Two Tex.Govt.Code §838.1031. Military Service Credit Governed by Uniformed Services Employment and Reemployment Rights Act

Texas County and District Retirement System Tex.Govt.Code § 843.601. Current Service for Qualified Military Service

Texas Municipal Retirement System, TexGovt.Code §853.506. Current Service for Reemployed Veterans

Provisions for Contributions to Savings Accounts and Pension Funds

Texas County and District Retirement System Tex.Govt.Code §845.306, requires the retirement system to deposit in a member’s individual account in the employees saving fund the amount contributed by a member in accordance with Section 843.601(b) to establish current service credit for military service under the USERRA.

Texas Municipal Retirement System, TexGovt.Code §853.506, requires that this retirement system make contributions, benefits, and service credit for qualified military service for qualifying employees in accordance with Section 414(u) of the Internal Revenue Code of 1986 (26 U.S.C. Section 414).

Additional Time to Complete Licensure Requirements:

Tex.Occ.Code §55.003 allows a member of the state military forces or a reserve component of the armed forces of the United States who holds a license and who is ordered to active duty by proper authority an additional amount of time, equal to the total number of years or parts of years that the person serves on

active duty, to complete any continuing education requirements and/or any other requirement related to the renewal of the person's license.

Tax Abatement

Tex.Prop.TaxCode §31.02 allows an eligible SM during a war or national emergency declared in accordance with federal law to pay delinquent property taxes on property in which the person owns any interest without penalty or interest if paid no later than the 60th day after the date on which the earliest of the following occurs:

- (1) the person is discharged from active military service;
- (2) the person returns to the state for more than 10 days;
- (3) the person returns to non-active duty status in the reserves; or
- (4) the war or national emergency ends.

A SM is eligible if he was on active military duty in this state and was transferred out of this state as a result of a war or national emergency declared in accordance with federal law or if he is a recalled reservist/National Guard member and transferred out of this state as a result of a war or national emergency declared in accordance with federal law.

City Pension Benefits

Art. 6243e.2(1) Sec. 11. Firefighters' relief and retirement fund in municipalities of at least 1,600,000 population. Allows for a SM to include time served in the armed forces during war or national emergency to be considered continuous service if the member if a member returns to active service as a firefighter before the fifth anniversary of a previous effective date of termination. Provisions are also made for employees who are injured while on active duty. This provision also provides for SMs who are injured or die while on active duty. This Article specifically provides that it is to comply with the USERRA.

Art. 6243g-4 Sec. 23. Police Officers Pension System in Certain Municipalities. An employee on active duty may not be required to make the monthly payments into the fund and may not lose any previous years' service with the city because of his military service. The SM's active military service shall count as continuous service in the police department if the member returns to the city police department after discharge from the uniformed service as an employee within the period required by the USERRA and the military service does not exceed the period for which a person is entitled to have service counted pursuant to

USERRA. Additionally, the city employing the SM is required to make its payments into the fund on behalf of each member while the member is on active duty military service. If a member who has less than 10 years of service in the pension system dies directly or indirectly as a result of his military service, prior to returning to active service with the city, the spouse, dependent children, dependent parent, or estate of the member is entitled to receive a benefit in the same manner as described by Section 16(c) of the Article.

Art. 6243n Sec. 6(c)(1). Municipal Retirement System in municipalities of 460,000 to 500,000. A member is entitled to uniformed creditable service for an authorized leave of absence from employment for military service by making periodic payments or a lump-sum payment. The employee's employer shall make contributions to the retirement fund as though the member has continued employment at the salary of the member for the last complete pay period before the absence for military service. The employer's contributions shall be made each pay period if the member is making periodic payments during the period. During an authorized leave of absence, the member accrues membership service for the pay periods in which the member makes a deposit. Membership service credit for a lump-sum payment accrues at the time of payment.

OTHER MISCELLANEOUS BENEFITS

Marriage License Application. An “absent applicant” marriage license may only be issued when both parties to the application are both certified to be active members of the armed forces of the U.S. and/or of the Texas State military forces (i.e. active duty with the Texas National Guard or Texas State Guard). **Tex.Fam.Code §2.006.**

Excuse from Jury Service. A SM serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence is excused from jury service. **Tex.Govt.Code §62.106.**

Excuse from Range Portion of Concealed Handgun License/Renewal. Tex.Govt.Code 411.1881 provides that a person may not be required to complete the range instruction portion of a handgun proficiency course to obtain or renew a concealed handgun license issued under this subchapter if the person:

- (1) is currently serving in or is honorably discharged from:
 - (A) the army, navy, air force, coast guard, or marine corps of the United States or an auxiliary service or

reserve unit of one of those branches of the armed forces; or

(B) the state military forces, as defined by Section 431.001; and

(2) has, within the five years preceding the date of the person's application for an original or renewed license, as applicable, completed a course of training in handgun proficiency or familiarization as part of the person's service with the armed forces or state military forces.

Waiver of Resident Hunting/Fishing License Fees - Tex.Parks&WildlifeCode §42.012 (Hunting) and §46.004 (Fishing). The resident hunting and fishing license fees as set by the Parks and Wildlife Commission shall be waived for a qualified disabled veteran and for a resident on active duty as a member of the United States military forces. A "qualified disabled veteran" is a veteran with a service connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 60 percent or more and who is receiving compensation from the United States for the disability.

Persons Exempt From Texas Driver's License Requirements -- Tex.Transp.Code § 521.027. This provision provides that persons in the service of the state military services or the United States while the person is operating an official motor vehicle in the scope of that service is exempt from the requirement to possess a valid Texas driver's license. A nonresident on active duty in the U.S. Armed Forces who holds a valid driver's license issued by the person's state or Canadian province of residence or a person who is the spouse or dependent child of such a non-resident and who holds a license issued by the person's state or Canadian province of residence is also exempt from the requirement of possessing a valid Texas driver's license while operating a motor vehicle within this State.

USEFUL RELATED WEBSITES

The reader will find many useful military and/or military related websites, most of which have not been previously identified in the body of this paper, at Appendix I.

FINAL THOUGHTS

May God hold our Servicemen and Servicewomen in the palm of His protective Hands, keep them safe, and return them safely to us. Pray for the

safety of our Troops! GOD BLESS AMERICA!

APPENDIX A

United States Code Annotated Title 50 Appendix. War and National Defense

Servicemembers Civil Relief Act
 Act Oct. 17, 1940, C. 888, 54 Stat. 1178,
 as Amended Dec. 19, 2003, Pub.L. 108-189, SEC. 1, 117 Stat. 2835

§ 501. Short title

This Act [sections 501 to 596 of this Appendix] may be cited as the "Servicemembers Civil Relief Act".

§ 502. Purpose

The purposes of this Act [sections 501 to 596 of this Appendix] are--

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act [said sections] to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

§ 510. Omitted

§ 511. Definitions

For the purposes of this Act [sections 501 to 596 of this Appendix]:

(1) Servicemember

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

(2) Military service

The term "military service" means--

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard--

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a

national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) Period of military service

The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) Dependent

The term "dependent", with respect to a servicemember, means--

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act [sections 501 to 596 of this Appendix].

(5) Court

The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) State

The term "State" includes--

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

(7) Secretary concerned

The term "Secretary concerned"--

(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) Motor vehicle

The term "motor vehicle" has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

(9) Judgment

The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

§ 512. Jurisdiction and applicability of Act

(a) Jurisdiction

This Act [sections 501 to 596 of this Appendix] applies to--

- (1) the United States;
- (2) each of the States, including the political subdivisions thereof; and
- (3) all territory subject to the jurisdiction of the United States.

(b) Applicability to proceedings

This Act [sections 501 to 596 of this Appendix] applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act [said sections]. This Act [said sections] does not apply to criminal proceedings.

(c) Court in which application may be made

When under this Act [sections 501 to 596 of this Appendix] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

§ 513. Protection of persons secondarily liable

(a) Extension of protection when actions stayed, postponed, or suspended

Whenever pursuant to this Act [sections 501 to 596 of this Appendix] a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(b) Vacation or set-aside of judgments

When a judgment or decree is vacated or set aside, in whole or in part,

pursuant to this Act [sections 501 to 596 of this Appendix], the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) Bail bond not to be enforced during period of military service

A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal

(d) Waiver of rights

(1) Waivers not precluded

This Act [sections 501 to 596 of this Appendix] does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) Waiver invalidated upon entrance to military service

If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106 [section 516 of this Appendix].

§ 514. Extension of protections to citizens serving with allied forces

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix] if that service with the allied force is similar to military service as defined in this Act [sections 501 to 596 of this Appendix]. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

§ 515. Notification of benefits

The Secretary concerned shall ensure that notice of the benefits accorded by this Act [sections 501 to 596 of this Appendix] is provided in writing to persons in military service and to persons entering military service

§ 516. Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction

(a) Reserves ordered to report for military service

A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III [of this Appendix] during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) Persons ordered to report for induction

A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III [of this Appendix] during the period beginning on the date of receipt of the order for induction and

ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

§ 517. Waiver of rights pursuant to written agreement

(a) In general

A servicemember may waive any of the rights and protections provided by this Act [sections 501 to 596 of this Appendix]. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

- (1) The modification, termination, or cancellation of--
 - (A) a contract, lease, or bailment; or
 - (B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.
- (2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--
 - (A) is security for any obligation; or
 - (B) was purchased or received under a contract, lease, or bailment.

(c) Prominent display of certain contract rights waivers

Any waiver in writing of a right or protection provided by this Act [sections 501 to 596 of this Appendix] that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

(d) Coverage of periods after orders received

For the purposes of this section--

- (1) a person to whom section 106 [section 516 of this Appendix] applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 [section 516 of this Appendix] shall be considered to be a period of military service.

§ 518. Exercise of rights under Act not to affect certain future financial transactions

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [sections 501 to 596 of this Appendix] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

- (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and the servicemember--
 - (A) a denial or revocation of credit by the creditor;
 - (B) a change by the creditor in the terms of an existing credit arrangement; or
 - (C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure the servicemember.
- (5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.
- (6) A change in the terms offered or conditions required for the issuance of insurance.

§ 519. Legal representatives

(a) Representative

A legal representative of a servicemember for purposes of this Act [sections 501 to 596 of this Appendix] is either of the following:

- (1) An attorney acting on the behalf of a servicemember.
- (2) An individual possessing a power of attorney.

(b) Application

Whenever the term "servicemember" is used in this Act [sections 501 to 596 of this Appendix], such term shall be treated as including a reference to a legal representative of the servicemember.

§ 520. Omitted

§ 521. Protection of servicemembers against default judgments

(a) Applicability of section

This section applies to any civil action or proceeding in which the defendant does not make an appearance.

(b) Affidavit requirement

(1) Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any

loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [sections 501 to 596 of this Appendix].

(4) Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Stay of proceedings

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that--

- (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
- (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [section 522 of this Appendix].

(f) Section 202 protection

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of

proceeding under section 202 [section 522 of this Appendix].

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the

servicemember to defend the action if it appears that--

- (A) the servicemember was materially affected by reason of that military service in making a defense to the action; and
- (B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 596 of this Appendix], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

§ 522. Stay of proceedings when servicemember has notice

(a) Applicability of section

This section applies to any civil action or proceeding in which the plaintiff or defendant at the time of filing an application under this section--

- (1) is in military service or is within 90 days after termination of or release from military service; and
- (2) has received notice of the action or proceeding.

(b) Stay of proceedings

(1) Authority for stay

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the 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, if the conditions in paragraph (2) are met.

(2) Conditions for stay

An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) 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.

(c) Application not a waiver of defenses

An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) Additional stay

(1) Application

A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) Appointment of counsel when additional stay refused

If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) Coordination with section 201 [section 521 of this Appendix]

A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201 [section 521 of this Appendix].

(f) Inapplicability to section 301 [section 531 of this Appendix]

The protections of this section do not apply to section 301 [section 531 of this Appendix].

§ 523. Fines and penalties under contracts

(a) Prohibition of penalties

When an action for compliance with the terms of a contract is stayed pursuant to this Act [sections 501 to 596 of this Appendix], a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) Reduction or waiver of fines or penalties

If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if--

(1) the servicemember was in military service at the time the fine or penalty was incurred; and

(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

§ 524. Stay or vacation of execution of judgments, attachments, and garnishments

(a) Court action upon material affect determination

If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember--

(1) stay the execution of any judgment or order entered against the servicemember; and

(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability

This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

§ 525. Duration and term of stays; codefendants not in service

(a) Period of stay

A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act [sections 501 to 596 of this Appendix] by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) Codefendants

If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix], the plaintiff may proceed against those other defendants with the approval of the court.

(c) Inapplicability of section

This section does not apply to sections 202 and 701 [sections 522 and 591 of this Appendix].

§ 526. Statute of limitations

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property

A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws

This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

§ 527. Maximum rate of interest on debts incurred before military service

(a) Interest rate limitation

(1) Limitation to 6 percent

An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.

(2) Forgiveness of interest in excess of 6 percent

Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal

The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation

(1) Written notice to creditor

In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty

Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with

subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection

A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) Interest

As used in this section, the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

§ 530. Omitted

§ 531. Evictions and distress

(a) Court-ordered eviction

(1) In general

Except by court order, a landlord (or another person with paramount title) may not--

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

(2) Housing price inflation adjustment

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph--

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which--

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term "CPI housing component" means the index published by the Bureau of Labor Statistics of

the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) Publication of housing price inflation adjustment

The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) Stay of execution

(1) Court authority

Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service--

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) Relief to landlord

If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) Penalties

(1) Misdemeanor

Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

(d) Rent allotment from pay of servicemember

To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) Limitation of applicability

Section 202 [section 522 of this Appendix] is not applicable to this section.

§ 532. Protection under installment contracts for purchase or lease

(a) Protection upon breach of contract

(1) Protection after entering military service

After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) Applicability

This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) Penalties

(1) Misdemeanor

A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act [section 517 of this Appendix], or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) Authority of court

In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

§ 533. Mortgages and trust deeds

(a) Mortgage as security

This section applies only to an obligation on real or personal property owned by a servicemember that--

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) Stay of proceedings and adjustment of obligation

In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is

materially affected by military service--

(1) stay the proceedings for a period of time as justice and equity require, or

(2) adjust the obligation to preserve the interests of all parties.

(c) Sale or foreclosure

A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the

period of the servicemember's military service except--

- (1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or
- (2) if made pursuant to an agreement as provided in section 107 [section 517 of this Appendix].

(d) Penalties

(1) Misdemeanor

A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

§ 534. Settlement of stayed cases relating to personal property

(a) Appraisal of property

When a stay is granted pursuant to this Act [sections 501 to 596 of this Appendix] in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) Equity payment

Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

§ 535. Termination of residential or motor vehicle leases

(a) Termination by lessee

(1) In general

The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

- (A) the lessee's entry into military service; or
- (B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases

A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases

This section applies to the following leases:

(1) Leases of premises

A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

- (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or
- (B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) Leases of motor vehicles

A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--

- (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or
- (B) the servicemember, while in military service, executes the lease and thereafter receives military orders--
 - (i) for a change of permanent station--
 - (I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or
(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) Manner of termination

(1) In general

Termination of a lease under subsection (a) is made--
(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and
(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice

Delivery of notice under paragraph (1)(A) may be accomplished--
(A) by hand delivery;
(B) by private business carrier; or
(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination

(1) Lease of premises

In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles

In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities

Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance

Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor

Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Penalties

(1) Misdemeanor

Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

(i) Definitions

(1) Military orders

The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS

The term "continental United States" means the 48 contiguous States and the District of Columbia.

§ 536. Protection of life insurance policy

(a) Assignment of policy protected

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) Exception

The prohibition in subsection (a) shall not apply--

(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

(2) when the premiums on the policy are due and unpaid; or

(3) upon the death of the insured.

(c) Order refused because of material affect

A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) Treatment of guaranteed premiums

For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act shall not be considered due and unpaid.

(e) Penalties

(1) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

§ 537. Enforcement of storage liens

(a) Liens

(1) Limitation on foreclosure or enforcement

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) Lien defined

For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) Stay of proceedings

In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service--

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303 [section 533 of this Appendix].

(c) Penalties

(1) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as

provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

§ 538. Extension of protections to dependents

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

§ 540. Omitted

§ 541. Definitions

For the purposes of this title [sections 541 to 549 of this Appendix]:

(1) Policy

The term "policy" means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which--

- (A) provides that the insurer may not--
 - (i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or
 - (ii) limit or restrict coverage for any activity required by military service; and
- (B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

(2) Premium

The term "premium" means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) Insured

The term "insured" means a servicemember whose life is insured under a policy.

(4) Insurer

The term "insurer" includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

§ 542. Insurance rights and protections

(a) Rights and protections

The rights and protections under this title [sections 541 to 549 of this Appendix] apply to the insured when--

- (1) the insured,
- (2) the insured's legal representative, or
- (3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title [said sections], unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title [said sections].

(b) Notification and application

The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title [said sections]. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) Limitation on amount

The total amount of life insurance coverage protection provided by this title [said sections] for a servicemember may not exceed \$250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

§ 543. Application for insurance protection

(a) Application procedure

An application for protection under this title [sections 541 to 549 of this Appendix] shall--

- (1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;
- (2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title [said sections].

(b) Additional requirements

The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title [said sections].

(c) Notice to the Secretary by the insurer

Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) Policy modification

Upon application for protection under this title [sections 541 to 549 of this Appendix], the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title [said sections] full force and effect.

§ 544. Policies entitled to protection and lapse of policies

(a) Determination

The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title [sections 541 to 549 of this Appendix] and shall notify the insured and the insurer of that determination.

(b) Lapse protection

A policy that the Secretary determines is entitled to protection under this title [said sections] shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) Time application

The protection provided by this title [said sections] applies during the insured's period of military service and for a period of two years thereafter.

§ 545. Policy restrictions

(a) Dividends

While a policy is protected under this title [sections 541 to 549 of this Appendix], a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) Specific restrictions

While a policy is protected under this title [sections 541 to 549 of this Appendix], cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title [said sections].

§ 546. Deduction of unpaid premiums

(a) Settlement of proceeds

If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title [sections 541 to 549 of this Appendix], the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title [said sections], together with interest due at the rate fixed in the policy for policy loans.

(b) Interest rate

If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) Reporting requirement

The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

§ 547. Premiums and interest guaranteed by United States

(a) Guarantee of premiums and interest by the United States

(1) Guarantee

Payment of premiums, and interest on premiums at the rate specified in section 406 [section 546 of this Appendix], which become due on a policy under the protection of this title [sections 541 to 549 of this Appendix] is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title [said sections] expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) Policy termination

If, at the expiration of insurance protection under this title [sections 541 to 549 of this Appendix], the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) Recovery from insured of amounts paid by the United States

(1) Debt payable to the United States

The amount paid by the United States to an insurer under this title [sections 541 to 549 of this Appendix] shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) Collection

Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) Debt not dischargeable in bankruptcy

Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) Crediting of amounts recovered

Any amounts received by the United States as repayment of debts incurred by an insured under this title [sections 541 to 549 of this Appendix] shall be credited to the appropriation for the payment of claims under this title [said sections].

§ 548. Regulations

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title [sections 541 to 549 of this Appendix].

§ 549. Review of findings of fact and conclusions of law

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title [sections 541 to 549 of this Appendix] are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code, and to judicial review only as provided in chapter 72 of such title.

§§ 550 to 554. Omitted

§ 560. Omitted

§ 561. Taxes respecting personal property, money, credits, and real property

(a) Application

This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's--

- (1) personal property (including motor vehicles); or
- (2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees--
 - (A) before the servicemember's entry into military service; and
 - (B) during the time the tax or assessment remains unpaid.

(b) Sale of property

(1) Limitation on sale of property to enforce tax assessment

Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings

A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption

When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) Interest on tax or assessment

Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) Joint ownership application

This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

§ 562. Rights in public lands

(a) Rights not forfeited

The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) Temporary suspension of permits or licenses

If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) Regulations

Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

§ 563. Desert-land entries

(a) Desert-land rights not forfeited

A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation--

(1) for failure to expend any required amount per acre per year in improvements upon the claim;

(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) Service-related disability

If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) Filing requirement

In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

§ 564. Mining claims

(a) Requirements suspended

The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and

recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) Requirements

The provisions in section 2324 of the Revised Statutes [30 U.S.C.A. § 28] that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than \$100 worth of labor shall be performed or improvements made during each year.

(c) Period of protection from forfeiture

A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) Filing requirement

In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

§ 565. Mineral permits and leases

(a) Suspension during military service

A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) Notification

In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military

service has begun and of the desire to hold the claim under this section.

(c) Contract modification

This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

§ 566. Perfection or defense of rights

(a) Right to take action not affected

This title [sections 561 to 571 of this Appendix] shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) Affidavits and proofs

(1) In general

A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

(2) Legal status of affidavits

Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

§ 567. Distribution of information concerning benefits of title

(a) Distribution of information by Secretary concerned

The Secretary concerned shall issue to servicemembers information explaining the provisions of this title [sections 561 to 571 of this Appendix].

(b) Application forms

The Secretary concerned shall provide application forms to servicemembers requesting relief under this title [sections 561 to 571 of this Appendix].

(c) Information from Secretary of the Interior

The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511 [sections 561, 570, and 571 of this Appendix]) and related application forms.

§ 568. Land rights of servicemembers

(a) No age limitations

Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) Residency requirement

Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) Entry applications

Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

§ 569. Regulations

The Secretary of the Interior may issue regulations necessary to carry out this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511 [sections 561, 570, and 571 of this Appendix]).

§ 570. Income taxes

(a) Deferral of tax

Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) Accrual of interest or penalty

No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) Statute of limitations

The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) Application limitation

This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

§ 571. Residence for tax purposes

(a) Residence or domicile

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(d) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(e) Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(f) Definitions

For purposes of this section:

(1) Personal property

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction

The term "tax jurisdiction" means a State or a political subdivision of a State.

§§ 572 to 574. Omitted

§ 580. Omitted

§ 581. Inappropriate use of Act

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act [sections 501 to 596 of this Appendix], the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

§ 582. Certificates of service; persons reported missing

(a) Prima facie evidence

In any proceeding under this Act [sections 501 to 596 of this Appendix], a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

- (1) That a person named is, is not, has been, or has not been in military service.
- (2) The time and the place the person entered military service.
- (3) The person's residence at the time the person entered military service.
- (4) The rank, branch, and unit of military service of the person upon entry.
- (5) The inclusive dates of the person's military service.
- (6) The monthly pay received by the person at the date of the certificate's issuance.
- (7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) Certificates

The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) Treatment of servicemembers in missing status

A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act [sections 501 to 596 of this Appendix] that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

§ 583. Interlocutory orders

An interlocutory order issued by a court under this Act [sections 501 to 596 of this Appendix] may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

§ 584. Omitted

§ 585. Omitted

§ 590. Omitted

§ 591. Anticipatory relief

(a) Application for relief

A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief--

- (1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or
- (2) from a tax or assessment falling due before or during the servicemember's military service.

(b) Tax liability or assessment

In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) Stay of enforcement of real estate contracts

(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation--

- (i) during the servicemember's period of military service; and
 - (ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.
- (B) Any stay under this paragraph shall be--
- (i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and
 - (ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military

service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) Stay of enforcement of other contracts

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement--

- (i) during the servicemember's military service; and
- (ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be--

- (i) for a period of time equal to the period of the servicemember's military service or any part of such period; and
- (ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) Affect of stay on fine or penalty

When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

§ 592. Power of attorney

(a) Automatic extension

A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney--

- (1) was duly executed by the servicemember--
 - (A) while in military service; or
 - (B) before entry into military service but after the servicemember--
 - (i) received a call or order to report for military service; or
 - (ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and
(3) expires by its terms after the servicemember entered a missing status.

(b) Limitation on power of attorney extension

A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

§ 593. Professional liability protection

(a) Applicability

This section applies to a servicemember who--

(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

(2) immediately before receiving the order to active duty--

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) Suspension of coverage

(1) Suspension

Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) Premiums for suspended contracts

A professional liability insurance carrier--

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) Nonliability of carrier during suspension

A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) Certain claims considered to arise before suspension

For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) Reinstatement of coverage

(1) Reinstatement required

Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) Time and premium for reinstatement

The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) Period of reinstated coverage

The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) Increase in premium

(1) Limitation on premium increases

An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) Exception

Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) Continuation of coverage of unaffected persons

This section does not--

- (1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or
- (2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) Stay of civil or administrative actions

(1) Stay of actions

A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if--

- (A) the action was commenced during the period of the suspension;
- (B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) Date of commencement of action

Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) Effect of suspension upon limitations period

In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) Death during period of suspension

If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension--

- (1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and
- (2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) Definitions

For purposes of this section:

(1) Active duty

The term "active duty" has the meaning given that term in section 101(d)(1) of title 10, United States Code.

(2) Profession

The term "profession" includes occupation.

(3) Professional

The term "professional" includes occupational.

§ 594. Health insurance reinstatement

(a) Reinstatement of health insurance

A servicemember who, by reason of military service as defined in section 703(a)(1) [section 593(a)(1) of this Appendix], is entitled to the rights and protections of this Act [sections 501 to 596 of this Appendix] shall also be entitled upon termination or release from such service to reinstatement of any health insurance that--

- (1) was in effect on the day before such service commenced; and
- (2) was terminated effective on a date during the period of such service.

(b) No exclusion or waiting period

The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if--

- (1) the condition arose before or during the period of such service;
- (2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and
- (3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

(c) Exceptions

Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

(d) Time for applying for reinstatement

An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

§ 595. Guarantee of residency for military personnel

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence--

- (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
- (2) be deemed to have acquired a residence or domicile in any other State; or
- (3) be deemed to have become a resident in or a resident of any other State.

§ 596. Business or trade obligations

(a) Availability of non-business assets to satisfy obligations

If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) Relief to obligors

Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

Current through P.L. 109-15, approved 06-17-05

APPENDIX B

SAMPLE INTEREST RATE REDUCTION NOTICE LETTER

BM3 Joe Sailor, SSN 123-45-6789
USS Dreadnaught, DDG-567
FPO xxxxx

[date]

Name of Creditor/Lessor
Address for notice
City, State, Zip

Re: Interest rate reduction request

TO WHOM IT MAY CONCERN:

I am in receipt of orders recalling me to active duty effective [date]. A copy my orders are enclosed herewith.

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx. §501 et seq., and, in particular, §527, please consider this notice that I am requesting that the interest rate provided in my [credit card account/motor vehicle lease/home improvement loan/mortgage on my home located at ____/ etc.] be reduced to six percent (6%) per annum in accordance with §527.

It is my understanding that pursuant to §527 of the SCRA, you are to reduce my payment effective the date of the next payment and refund, pro rata, any overpayments of interest effective as of the date of my orders require me to report for duty, that is, [date].

Sincerely,

[signature of servicemember]
Printed Name of Servicemember

Enclosure – copy of military orders

APPENDIX C

SAMPLE LEASE TERMINATION LETTER

BM3 Joe Sailor, SSN 123-45-6789
USS Dreadnaught, DDG-567
FPO xxxxx

[date]

Name of Creditor/Lessor
Address for notice
City, State, Zip

Re: Cancellation/Termination of _____ lease

TO WHOM IT MAY CONCERN:

I am in receipt of orders recalling me to active duty for service aboard ship that is homeported in Norfolk, VA. Pursuant to the orders, a copy of which are enclosed herewith, I am being relocated to the State of Virginia effective [date].

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx. §501 et seq., and, in particular, §535, please consider this notice that I am terminating my lease of

apartment #___ located at [address], San Antonio, Bexar County, Texas 78230.
the home located at [address], San Antonio, Bexar County, Texas 78230.
The Chevorlet Suburban VIN _____, Texas License Number _____.

The effective date of my lease termination is [date]. [for the vehicle termination, continue: Unless otherwise directed by you or your representative, I intend to return possession of the Suburban to you by delivering it to Ancira Chevrolet, ___ San Pedro, San Antonio, Texas within 15 days of the date of this letter in accordance with §535 of the SCRA.]

To the extent that I owe you any additional lawful charges pursuant to the SCRA, I am prepared to pay them upon notification of the particulars of the charges by addressing the letter to me as follows: [name, address, etc.].

To the extent that I am due any pro rata refund of my rent/lease payment as well as the refund of my security deposit, please send these funds to me at [address].

Sincerely,

[signature of servicemember]
Printed Name of Servicemember

Enclosure – copy of military orders

APPENDIX D MONTHLY BASIC PAY TABLE

EFFECTIVE 1 JANUARY 2006

YEARS OF SERVICE

PAY GRADE	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
COMMISSIONED OFFICERS															
O-10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13365.00	13430.40	13709.70	14196.30
O-9	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11689.50	11857.50	12101.10	12525.60
O-8	8271.00	8541.90	8721.60	8772.00	8996.10	9371.10	9458.10	9814.20	9916.20	10222.80	10666.20	11075.40	11348.70	11348.70	11348.70
O-7	6872.70	7191.90	7339.80	7457.10	7669.80	7879.50	8122.50	8364.90	8607.90	9371.10	10015.80	10015.80	10015.80	10015.80	10066.50
O-6	5094.00	5596.20	5963.40	5963.40	5985.90	6242.70	6276.60	6276.60	6633.30	7263.90	7634.10	8004.00	8214.60	8427.60	8841.30
O-5	4246.50	4783.50	5115.00	5177.10	5383.50	5507.40	5779.20	5978.70	6236.10	6630.60	6818.10	7003.80	7214.40	7214.40	7214.40
O-4	3663.90	4241.40	4524.30	4587.60	4850.10	5131.80	5482.20	5755.80	5945.40	6054.30	6117.60	6117.60	6117.60	6117.60	6117.60
O-3	3221.40	3651.90	3941.70	4297.50	4503.00	4728.90	4875.30	5115.90	5240.70	5240.70	5240.70	5240.70	5240.70	5240.70	5240.70
O-2	2783.10	3170.10	3651.00	3774.30	3852.00	3852.00	3852.00	3852.00	3852.00	3852.00	3852.00	3852.00	3852.00	3852.00	3852.00
O-1	2416.20	2514.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60	3039.60
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	0.00	0.00	0.00	4297.50	4503.00	4728.90	4875.30	5115.90	5318.40	5434.50	5592.90	5592.90	5592.90	5592.90	5592.90
O-2E	0.00	0.00	0.00	3774.30	3852.00	3974.70	4181.40	4341.60	4460.70	4460.70	4460.70	4460.70	4460.70	4460.70	4460.70
O-1E	0.00	0.00	0.00	3039.60	3246.30	3366.00	3488.70	3609.30	3774.30	3774.30	3774.30	3774.30	3774.30	3774.30	3774.30
WARRANT OFFICERS															
W-5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5720.10	5916.30	6113.10	6311.10
W-4	3328.80	3581.10	3684.00	3785.10	3959.40	4131.30	4305.90	4475.70	4651.50	4927.20	5103.60	5276.10	5454.90	5631.00	5811.00
W-3	3039.90	3166.80	3296.40	3339.30	3475.50	3631.50	3837.30	4040.40	4256.40	4418.40	4579.80	4649.10	4720.80	4876.80	5032.50
W-2	2673.90	2826.60	2960.40	3057.30	3140.70	3369.60	3544.50	3674.40	3801.30	3888.30	3961.50	4100.70	4239.00	4379.10	4379.10
W-1	2361.30	2554.50	2683.80	2767.50	2990.40	3124.80	3243.90	3376.80	3465.00	3544.80	3674.70	3773.10	3773.10	3773.10	3773.10
ENLISTED MEMBERS															
E-9	0.00	0.00	0.00	0.00	0.00	0.00	4022.10	4113.30	4228.20	4363.50	4499.40	4717.80	4902.30	5097.00	5394.00
E-8	0.00	0.00	0.00	0.00	0.00	3292.50	3438.30	3528.30	3636.30	3753.30	3964.50	4071.60	4253.70	4354.80	4603.50
E-7	2288.70	2498.10	2593.80	2720.70	2819.40	2989.50	3084.90	3180.30	3350.40	3435.60	3516.30	3565.80	3732.60	3840.60	4113.60
E-6	1979.70	2178.00	2274.30	2367.60	2465.10	2685.00	2770.50	2865.30	2948.70	2978.10	2998.50	2998.50	2998.50	2998.50	2998.50
E-5	1814.10	1935.30	2028.60	2124.60	2273.70	2402.10	2496.60	2526.60	2526.60	2526.60	2526.60	2526.60	2526.60	2526.60	2526.60
E-4	1662.90	1748.10	1842.60	1935.90	2018.40	2018.40	2018.40	2018.40	2018.40	2018.40	2018.40	2018.40	2018.40	2018.40	2018.40
E-3	1501.20	1595.70	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00	1692.00
E-2	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40	1427.40
E-1 >4	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50	1273.50
E-1 <4	1178.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE--BASIC PAY FOR O7-O10 IS LIMITED TO \$12,666.60
LEVEL III OF THE EXECUTIVE SCHEDULE

NOTE--BASIC PAY FOR O6 AND BELOW IS LIMITED TO \$11,158.20
LEVEL V OF THE EXECUTIVE SCHEDULE

3.1%, 2006 Increase as established under § 1009 of US Code Title 37.

An adjustment under this section shall have the force and effect of law - Released October 11, 2005.

1.9% Increase for Level III and Level V for year 2006.

signed month day, year.

OFFICIAL

APPENDIX E

FY2006				
Grade	Partial BAH	BAH-II	BAH-II	BAH-DIFF
		With	Without	
		Dependent Rate	Dependent Rate	
O-10	50.70	1429.20	1161.60	277.50
O-9	50.70	1429.20	1161.60	277.50
O-8	50.70	1429.20	1161.60	277.50
O-7	50.70	1429.20	1161.60	277.50
O-6	39.60	1286.70	1065.60	229.80
O-5	33.00	1240.20	1026.00	222.00
O-4	26.70	1093.20	950.70	147.60
O-3	22.20	904.50	762.30	147.30
O-2	17.70	771.90	604.20	173.70
O-1	13.20	690.90	509.40	188.40
O-3E	22.20	972.30	822.90	155.10
O-2E	17.70	877.20	699.30	185.10
O-1E	13.20	810.90	601.80	216.90
W-5	25.20	1055.70	965.70	92.10
W-4	25.20	967.50	857.70	113.40
W-3	20.70	887.10	721.20	171.60
W-2	15.90	815.10	639.90	181.20
W-1	13.80	705.30	536.40	175.50
E-9	18.60	928.50	704.40	231.90
E-8	15.30	856.50	646.80	217.20
E-7	12.00	795.00	552.30	251.70
E-6	9.90	734.40	499.80	243.00
E-5	8.70	660.90	461.10	206.70
E-4	8.10	574.20	400.80	179.10
E-3	7.80	534.30	393.30	146.40
E-2	7.20	509.40	319.50	196.20
E-1 >4	6.90	509.40	285.30	231.90
E-1 <4	6.90	509.40	285.30	231.90

APPENDIX F

SAMPLE MOTION AND ORDER TO OBTAIN MILITARY PAY RECORDS
OR MILITARY PERSONNEL RECORDS, ETC.

Style of Case

MOTION FOR PRODUCTION OF MILITARY PAY RECORDS

Comes now Movant/Petitioner/Plaintiff/Respondent/Defendant [**name of party**], and moves this court for an order to obtain the military pay records of [**name of respondent party**], and shows as follows:

[Plead facts that justify obtaining records from Defense Finance and Accounting Service or other military agency, such as:]

1. On [date], Movant sent its Requests for Production to Respondent in which was a request for him/her to produce his/her military pay records, but the requested records were not produced, reportedly not in the possession of Respondent. Respondent refuses to provide Movant with a signed authorization to allow Movant to obtain the records directly from the Defense Finance and Accounting Service (DFAS), citing privacy issues.
2. Movant has a necessity to determine so the Court can [divide/partition the military retirement and/or retired pay entitlement of Respondent][determine the various military pay and allowance entitlements due and/or received by Respondent][determine the special pays/allowances and/or special bonuses paid to and/or received by Respondent] for the time period [give period].
3. It will be necessary for Respondent to be identified in the Court's order by name, rank and social security number in order for the DFAS to promptly comply with the order to produce the requested records. In this regard, the order should identify Respondent as: BM3 Joe Sailor, SSN 123-45-6789.
4. In order for Movant to determine and calculate the community property portion of Respondent's military retirement/retired pay entitlement, he/she needs to have the following documents: Respondent's [Retiree Account Statements for the period [state inclusive years], usually only one per calendar year] [Leave and Earnings Statements for the period [state inclusive months/years]].
5. The requested records are, or should be, available through the DFAS, Attention: Garnishment Operations, P.O. Box 998002, Cleveland, OH 44199-8002, but the DFAS will not produce the necessary documents without an order signed by this Court ordering the production of the records.

Wherefore Movant prays this Court enter an order requiring the DFAS to produce the above requested records.

Respectfully submitted,

HIGDON, HARDY & ZUFLACHT, L.L.P.
12000 Huebner Road, Suite 200
San Antonio, Texas 78230-1210
Telephone: (210) 349-9933
Telecopier: (210) 349-9988
Email: jnhigdon@hhzlaw.com

By: _____

JAMES N. HIGDON
TSB#09590500
ATTORNEYS FOR JANE SAILOR

ORDER FOR PRODUCTION OF MILITARY PAY RECORDS

On August 16, 2006, came on for hearing Movant's Motion for Production of Military Pay Records.

All parties appeared by and through their attorneys of record.

The Court finds that it has jurisdiction over the subject matter and the parties.

_____, Official Certified Shorthand Reporter of the ___ District Court of _____ County, Texas made a record of the proceedings. [OR A record of the proceedings was waived by the parties with the consent of the Court.]

The Court, having heard the evidence and argument of counsel, finds that the Motion for Production of Military Pay Records should be in all things granted.

IT IS THEREFORE ORDERED AND DECREED that the Defense Finance and Accounting Service, Attention: Garnishment Operations, P.O. Box 998002, Cleveland, OH 44199-8002, is ordered to produce the following records of

BM3 Joe Sailor, SSN 123-45-6789:

1. All [Retiree Account Statements for the period [state inclusive years]
2. All [Leave and Earnings Statements for the period [state inclusive months/years].
3. All [Special pays/allowances and/or special bonuses paid to and/or received by Joe Sailor] for the time period [give period].

IT IS FURTHER ORDERED that the specified documents shall be sent to James N. Higdon, Attorney for Jane Sailor, at 12000 Huebner Road, Suite 200, San Antonio, Texas 78230-1210, with a copy produced and sent to Joe Sailor's attorney, [name and address], simultaneously.

Signed on August 16, 2006.

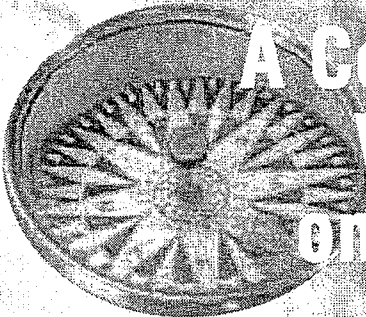
Judge Presiding

APPROVED AS TO FORM ONLY:

HIGDON, HARDY & ZUFLACHT, L.L.P.
12000 Huebner Road, Suite 200
San Antonio, Texas 78230-1210
Telephone: (210) 349-9933
Telecopier: (210) 349-9988
Email: jnhigdon@hhzlaw.com

By: _____
JAMES N. HIGDON
TSB#09590500
ATTORNEYS FOR JANE SAILOR

[Other Attorney's Name and address, etc.]



A Compass for Entitlements While Reservists Are on Orders to Active Duty

By CAPT Thomas L. McAtee, USNR (Ret)

Have you ever been confused while trying to figure out your entitlements for a particular set of active duty orders? You are not alone in the quest to get an answer to this not-so-easy question. Why is it so difficult to determine potential entitlements for a set of active duty orders? First, because entitlements and eligibility requirements are found in several financial regulation publications not readily available to most service members. Second, we make it difficult in the way we think about it; in fact, so difficult that it has almost become, in the minds of many Reservists, a question that will never be answered accurately.

Let's try to answer this accurately by suggesting a new approach. Forget about the TYPE of orders and concentrate on the DURATION (number of days specified) on the orders. Duration of orders is what predominantly determines the entitlements due to the Reservist. Consider this, why would a day on active duty under Annual Training (AT) orders be any different than a day served on Active Duty for Training (ADT), Active Duty for Special Work (ADSW), or Involuntary Active Duty (recall) orders? In reality, there is no difference. So, if a day of active duty is a day of active duty, that confirms that the duration of orders is the prime factor that determines entitlements applicable to each set of orders.

Note: *The scope of information is purposely focused on all types of active duty orders and active duty supporting a contingency operation. Topics regarding entitlements and benefits involving IDT, IDTT, or death benefits are not discussed.*

PORTAL TO PORTAL COVERAGE

In the case of active duty orders, disability benefits coverage begins at commencement of travel to/from duty site (line of duty). Travel must be directly to the site as specified in the travel itinerary of the orders. Coverage is for any illness, disease, or injury occurring in the line of duty. Entitlements may encompass medical/dental care and incapacitation pay. *Note: Portal to portal also refers to travel to/from IDT and remaining overnight before IDT or between successive periods of IDT.*

BASIC PAY

Payment of basic pay is based on pay grade and years of service (longevity). For an active duty period less than 30 days, pay and allowances, including travel time, are computed at 1/30th of the monthly rate. For periods of 30 days or more, the computation of pay and allowances encompasses the entire period of time served on active duty, including travel time. If orders state no pay, allowances are still payable.

BASIC ALLOWANCE FOR SUBSISTENCE (BAS)

If ordered to active duty with pay, BAS is an entitlement. Generally, officers are entitled to standard BAS on a monthly basis. Enlisted members are entitled either to standard BAS or to Rations in Kind Not Available (RIKNA). BAS is in addition to overseas cost of living allowances (COLA) authorized by Joint Federal Travel Regulations (JFTR). If active duty orders state no pay and allowances, then nothing is payable. However, orders that just specify active duty without pay do not affect entitlement or payment of BAS. Anyone receiving BAS must pay for meals or rations.

BASIC ALLOWANCE FOR HOUSING (BAH)

Reservists on active duty receive BAH depending on orders duration, grade, and dependency status. For orders to active duty for 140 days or more, or orders to active duty for a contingency operation regardless of duration, BAH is an entitlement. In the latter case, the orders must specify the name of the contingency. BAH is paid based on grade; dependency status; and location of duty station, if orders are Permanent Change of Station (PCS). Certain contingency operation orders may exceed 139 days but are not classified PCS. In this case, BAH is based on the Reservist's primary place of residence. For orders of 139 days or less, BAH II (old BAQ) is entitled. BAH II is a flat rate based on grade and dependency status, not locality. If orders are extended, and the prospective period is 140 days or more, entitlement to BAH will start on date of orders modification. Go to www.dtic.mil/perdiem to review current rates.

Permanent Duty Station (PDS) is an additional factor. For training duty (AT or ADT), the location where training duty is performed shall be the PDS for BAH entitlement purposes. For active duty other than training, not PCS, the Reservist's primary place of residence is the PDS.

If possible, at check-in, discuss with the servicing PSD the location/rate of BAH payable on orders. This will resolve questions up front and potentially eliminate a pay problem.

MEDICAL/DENTAL CARE

Service Member care: Regardless of duration of orders or IDT, the individual Reservist is covered. For orders over 30 days, the Reservist is automatically enrolled in TRICARE Prime. For orders of 30 days or less, the Reservist's coverage is for appropriate medical and dental care for an injury or illness incurred in line of duty. Temporary enhancements to health care for the Reservist:

- Medical or dental screening and care. Whenever a Reservist receives notice that he/she will be called or ordered to active duty for a period of more than 30 days, medical and dental screening and care will be provided to meet applicable standards for deployment. This care is provided before entry on active duty. Eligibility for such care must be specified in orders. Valid through 31 December 2004, unless extended by law.

- Early eligibility date for TRICARE benefits. Whenever a Reservist is issued active duty orders (for more than 30 days), in support of a contingency operation, with a delayed effective date for reporting to duty, he/she shall be eligible for TRICARE as if on active duty on date of issue, or 90 days prior to report date, whichever is later. Valid through 31 December 2004, unless extended by law.



Family care: Health care for eligible family members is dependent on length of orders and whether those orders were issued in support of a contingency operation. If the sponsor's (service member) orders are:

- Not in support of a contingency operation. If orders are specified for a period of more than 30 days, medical care is provided under TRICARE Prime, Standard, or Extra effective upon entry on active duty. Cost share and deductible apply.

- In support of a contingency operation. As mentioned previously under "Service Member," care may begin even before entry on active duty. This also applies to family members of a Reservist ordered to active duty for more than 30 days in support of a contingency operation. Family members may enroll in TRICARE Prime, Extra, or Standard. Specifics of each TRICARE option may be reviewed at www.tricare.osd.mil.

Transitional care: Reserve Component members who serve on active duty for more than 30 days, in support of a contingency operation, are authorized coverage under the Transitional Assistance Medical Program (TAMP). Reservists and eligible family members will be covered for a period of 180 days beginning on the date of separation. Coverage may be under TRICARE Prime, Extra, or Standard. Valid through 31 December 2004, unless extended by law. If not extended, TAMP coverage will be adjusted to 60 days for those with less than six years of active service or 120 days for those with over six years.

Dental care: Dental care is not provided to eligible family members based on orders. The TRICARE Dental Program (TDP) is a premium-based program with single and family plans available. Enrollment is voluntary with worldwide coverage. Selected Reservists and IRR personnel are eligible to enroll. The 2004 per-month rates are: \$22.66 for a family of a Reservist on active duty, and \$56.66 for a family of a Selected Reservist or IRR member not on active duty. The plan may be reviewed by going to www.ucci.com or by calling 1-800-866-8499.

SEPARATION OR RETIREMENT FOR PHYSICAL DISABILITY

Based upon a determination by the Secretary of the Navy, a Reservist with a disability that was incurred or aggravated in the line of duty may be separated, placed on the Temporary Disability Retired List (TDRL), or retired. In line of duty includes travel direct to specified site as described in "Portal to Portal Coverage."

TRAVEL TIME

Reservists are entitled to active duty pay and allowances for time allowed for necessary travel. Allowable travel time is considered active duty for all purposes normally ascribed to active duty, such as retirement credit. For orders of 30 days or less, not more than one day is allowed for air travel within the continental United States. If air travel is not reasonably available, then travel time is allowed if actually performed by public surface transportation. When active duty training orders are combined with IDT, the active duty orders should specify the travel date.

PER DIEM

Per diem encompasses lodging, meals, and incidental expenses reasonably incurred by the service member while on temporary duty (TDY). The rate of entitlement is based on the member's TDY location, not the lodging location.

Per diem is normally paid for whole days, except for departure and return days to permanent duty station. No per diem is payable for TDY exceeding 139 days without Secretary of the Navy approval. Currently, per diem is being paid to Reservists on contingency operations orders exceeding 139 days based on a SECNAV determination. Normally orders for 140 days (20 weeks) or more are permanent change of station (PCS). A provision for actual expense allowance (AEA) exists. AEA may be approved for a particular travel assignment because of special duty or because costs have escalated temporarily due to unforeseen events.



A Little Bit More About Per Diem

When performing Annual Training (AT) at a location where both government quarters (GQ) and government messing (GM) are available, per diem is not authorized. The cost of GQ is a reimbursable expense. Remember, regardless, where performed is considered the Reservist's permanent duty station.

When performing ADT at a location where both GQ and GM are available, per diem is authorized. Per diem in this case would be the Government Meal Rate (\$8.30 per day) and incidental expenses. The cost of GQ is a reimbursable expense.

When performing AT or ADT at a location where either GQ or GM are not available, per diem is authorized.

Payment of Lodging Expense While on Authorized Leave from TDY Location

Effective with the enactment of the NDA for FY2004, lodging expenses incurred by the Reservist at the TDY location, while in an authorized leave status, may be reimbursed. This provision only applies to orders in support of a contingency operation. Per diem is not paid while in a leave status.

ENTITLEMENTS FOR RESERVISTS ON ORDERS TO ACTIVE DUTY (AT/ADT/ADSW/Volunteer or Involuntary Recall)

	ENTITLEMENTS BASED ON ORDERS' DURATION AND LOCATION	REFERENCE *	
Prior to Day 1	<ul style="list-style-type: none"> ■ Temporary Health Care Services for Reserve Component Members and Family Members 	10 USC 1074, 1074(a) 1076, 1145(a)	
Day 1	<div style="display: flex; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); text-align: center; margin-right: 10px;"> D U R A T I O N O F O R D E R S </div> <div style="border-left: 1px solid black; border-right: 1px solid black; height: 100%; position: relative;"> <div style="position: absolute; top: 0; left: 0; right: 0; text-align: center;">Day 1</div> <div style="position: absolute; bottom: 0; left: 0; right: 0; text-align: center;">29 days</div> <div style="position: absolute; bottom: 0; left: 0; right: 0; text-align: center;">89 days</div> <div style="position: absolute; bottom: 0; left: 0; right: 0; text-align: center;">139 days</div> <div style="position: absolute; bottom: 0; left: 0; right: 0; text-align: center;">179 days</div> </div> </div> <ul style="list-style-type: none"> ■ Portal To Portal Coverage ■ Basic Pay ■ Basic Allowance for Subsistence - BAS <ul style="list-style-type: none"> ■ For enlisted: if rations in kind not available, permission to mess separately granted. ■ Basic Allowance for Housing - BAH (Type II) ■ Medical/Dental Care (Service Member) ■ Separation or Retirement for Physical Disability ■ Travel Allowance ■ Per Diem <ul style="list-style-type: none"> ■ Rates vary based on type of messing/berthing ■ Not for orders of 20+ weeks except for contingency ops ■ Hardship Duty Pay ■ Hostile Fire/Imminent Danger Pay (IDP) - Specified locations ■ Hazardous Duty Pay <ul style="list-style-type: none"> ■ Various specialties/orders must require specific duty ■ Flight Pay ■ Special Pay Medical Corps/Dental Corps ■ Foreign Language Proficiency Pay ■ Tax Benefit (designated combat zones) ■ DD 214 (For MOB or contingency OPS orders only) 	10 USC 1074 DODFMR, VOL 7A, CH 2 & 57 DODFMR, VOL 7A, CH 25 & 57 DODFMR, VOL 7A, CH 26 & 57 10 USC 1074(a), 1074 10 USC 1201-1206 JFTR, CH 3 & 7 JFTR, CH 4 & 7 DODFMR, VOL 7A, CH 17 DODFMR, VOL 7A, CH 10 DODFMR, VOL 7A, CH 57 DODFMR, VOL 7A, CH 19 26 USC 112 BUPERSINST 1900.8	
		<ul style="list-style-type: none"> ■ Active Duty Identification Card <ul style="list-style-type: none"> ■ Authorizes appropriate medical, commissary, exchange and MWR benefits and privileges for the period of active duty specified on orders. ■ Family Care ■ Accrue Leave - 2.5 days per month ■ Leave Sell Back ■ Career Sea Pay (E-4 & above) ■ Family Separation Allowance (Type II) ■ Health Professional Pay <ul style="list-style-type: none"> ■ Other than training orders ■ Transitional Health Care 	BUPERSINST 1750. 10A 10 USC 1076 DODFMR, VOL 7A, CH 35 & 57 DODFMR, VOL 7A, CH 35 & 57 DODFMR, VOL 7A, CH 18 DODFMR, VOL 7A, CH 27 DODFMR, VOL 7A, CH 5, 6, 21 10 USC 1145 AND 1076
		<ul style="list-style-type: none"> ■ DD 214 ■ Uniform Allowance (Officers) - Once every 2 Years 	BUPERSINST 1900.8 DODFMR, VOL 7A, CH 30
		<ul style="list-style-type: none"> ■ Advance Pay - One month advance ■ Basic Allowance for Housing (BAH) ■ Family Separation Allowance (Type I) ■ Household Goods Shipment 	DODFMR, VOL 7A, CH 32 DODFMR, VOL 7A, CH 26 DODFMR, VOL 7A, CH 27 JFTR, CH 5
180 days or more		<ul style="list-style-type: none"> ■ Uniform Allowance (Enlisted) ■ Special Duty Assignment Pay (Enlisted only) 	DODFMR, VOL 7A, CH 29 DODFMR, VOL 7A, CH 8 & 57/ SECNAVINST 1160.1A

NOTE:

This article reflects an array of potential entitlements. Variants in entitlements can result depending upon the circumstances to which ordered to active duty, especially when supporting a contingency operation. As practical, source document references have been provided. Your servicing PSD and policy guidance message, in the case of contingency operations, will determine actual eligibility.

* DODFMR - DOD Financial Management Regulation <www.dtic.mil/comptroller/fmr>

* JFTR - Joint Federal Travel Regulations <www.dtic.mil/perdiem>

HARDSHIP DUTY PAY

Hardship Duty Pay (HDP) superseded foreign duty pay on 4 February 1999. HDP is paid to Reservists, at a monthly rate, while performing duty designated by SECDEF as hardship duty. HDP is paid for specific missions or location assignments. Mission assignment HDP is paid at full monthly rate, regardless of time spent on active duty. Mission HDP rate, regardless of pay grade, is currently \$150. Location assignment HDP is payable to enlisted personnel only and varies according to grade.

HOSTILE FIRE (HFP)/IMMINENT DANGER PAY (IDP)

For any part of a month served in a hostile fire or imminent danger area, an entire monthly amount of HFP or IDP is paid without being prorated. Such pays are to be certified by an appropriate commander (at the lowest level of command). Designated HFP/IDP areas may be obtained in DoD FMR Volume 7A, Chapter 10, Figure 10-1 or <www.dtic.mil/comptroller/fmr/07a>.

HAZARDOUS DUTY PAY

Hazardous Duty Incentive Pay is a monthly payment made to non-crew (officers and enlisted) for certain hazardous duty, such as explosive demolition or flight deck duty. HFP/IDP is currently \$225, authorized through December 2004.

FLIGHT PAY

Aviation Career Incentive Pay (ACIP) is an entitlement (continuous or conditional) while performing active duty. For continuous ACIP, entitlement is based upon meeting aviation gate requirements. Conditional ACIP, normally for flight surgeons, requires meeting monthly flight hours. Flight pay is entitled for allowable travel time when on orders for 30 days or less.

SPECIAL PAY FOR MEDICAL/DENTAL CORPS OFFICERS

Medical and Dental Corps officers on active duty for less than one year may receive special pay for each month of AT, ADT, or ADSW. Amount of special pay will be prorated for periods less than one month. Also, see "Health Professional Pays" on page 18.

FOREIGN LANGUAGE PROFICIENCY PAY

Reservists who have been certified (normally within 12 months) proficient in a foreign language under criteria established by the Secretary of the Navy may receive a prorated amount of Foreign Language Proficiency Pay (FLPP) for each day of duty. This includes inactive duty training (IDT).

TAX BENEFIT IF IN COMBAT OR HAZARDOUS DUTY ZONES

Any monthly pay and bonuses paid to enlisted personnel are excluded from gross income while serving any portion of the month in a combat zone designated by Presidential Executive Order. For a commissioned officer, exclusion is limited to the highest enlisted pay plus hostile fire/imminent danger pay.

DD 214 – CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

Normally, for Reservists on any type of active duty orders, a DD 214 is prepared only when the period of active duty service is 90 days or more. However, Reservists ordered and gained to active duty under a Presidential Reserve Call-Up (PRC), partial mobilization, or orders specifying support for a contingency operation shall have a DD 214 prepared regardless of the duration of active duty. If a Reservist performs back-to-back orders of different types, a DD 214 shall be prepared for each specified period based on the above policy. Safeguard each DD-214 you receive.

IDENTIFICATION CARDS

For orders to active duty for more than 30 consecutive days, the Reservist is entitled to be issued a DD Form 2 (Active) identification card. If the Reservist is entitled to an active ID card, then the dependents may be issued the United States Uniform Services Identification and Privilege Card (DD Form 1173-Tan). With the tan DD 1173 ID card, the lawful spouse and unmarried children under 21 are authorized medical care in Uniform Services or civilian facilities, unlimited exchange and commissary privileges, and access to Morale, Welfare, and Recreation facilities.

LEAVE ACCRUAL

The accrual of leave commences when a Reservist serves on active duty with pay for periods of 30 consecutive days or more. Leave accrues at a rate of two and a half days for each month of active duty. The duration of active duty, for purposes of accruing leave, includes allowable travel time.

LEAVE SELL BACK

The sell back of accrued leave for Reservists beyond the 60-day career limitation is authorized, if on orders for active duty of more than 30 days (but not beyond 365 days). Effective 1 October 2001, leave sell back rate is based on base pay only and is normally subject to taxation and withholding tax, except when in combat zone or hazardous duty area.

Leave Disposition

Since leave is an earned entitlement, what do you do with leave after you earn it? The simple answer is either use it, sell it back, or lose it. Unfortunately, the latter happens to more Reservists than you think.

Be smart and coordinate with the supported command regarding your earned leave. Since no leave can be taken without permission, the command is a player in the leave issue. If you plan to take leave during the course of the orders, make sure the command knows you are accruing leave and wish to take leave during the period of the orders. If you plan to take terminal leave at the end of the orders, plan ahead because orders are not extended to account for accrued leave. If you plan to sell back the leave, no real plan is required.

CAREER SEA PAY (E4 AND ABOVE)

Career Sea Pay is based on accrued years of sea duty. The rate is based upon grade and years of accrued service while serving on a ship whose primary mission is accomplished while underway.

FAMILY SEPARATION ALLOWANCE

Family Separation Allowance (FSA) applies only to Reservists with dependents while on active duty with pay for periods of more than 30 days. FSA is paid in addition to any other allowance or per diem to which entitled. There are two types:

FSA I – Purpose is to pay added housing expenses resulting from enforced separation from dependents. Must be on permanent duty outside the U.S. or in Alaska for 140 days or more. FSA I rate is equal to BAQ without dependents for your pay grade regardless of actual dependence status.

FSA II – Provides compensation for added expenses due to enforced family separation of greater than 30 days but less than 140 days, normally. Paid only to Reservists with dependents. Monthly amount is currently \$250 until 31 December 2004.

HEALTH PROFESSIONAL PAYS (OTHER THAN TRAINING ORDERS)

Medical Corps, Dental Corps, and Certified Registered Nurse Anesthetists Nurse Corps officers on active duty other than AT/ADT, for more than 30 days but less than one year, are entitled, if eligible, to special pays specified in DoD FMR, Volume 7A, chapters 5, 6, or 21, as applicable.

UNIFORM ALLOWANCE (OFFICER) ONCE EVERY TWO YEARS

This allowance is payable each time of entry or reentry on active duty or active duty for training (including travel time) for more than 90 days. The period may be served under two or more orders requiring a continuous period of more than 90 days of active duty. The amount of the allowance is \$200. The allowance is not payable when the tour of duty for which payment is being considered began within two years after the end of a previous period of active duty of more than 90 days, whether or not a uniform allowance was paid for the previous tour.

ADVANCE PAY

Advance pay, when authorized, is provided to fund extraordinary expenses incident to official orders. A Reservist in receipt of orders for 140 days or more (normally permanent change of station) is entitled to advance pay. Reservists recalled involuntarily to active duty for more than 30 days are entitled to advance pay. The advance is normally one month, but under certain circumstances may be up to three months of base pay. Repayment period extends up to 24 months.

HOUSEHOLD GOODS (HHG) SHIPMENT

When on TDY orders, other than for training, a limited HHG shipment may be authorized. The following weight limitations apply: 225 pounds for E1-3, 400 pounds for E4-7, 500 pounds for E-8, 600 pounds for E9-O3, and 800 pounds for O4-O6. The above limitations do not include accompanied baggage transported for free on a commercial ticket. Policies regarding shipment or storage of HHG and POV storage for Reservists recalled to active duty in support of a contingency operation are normally contained in the mobilization policy and procedures guidance message promulgated by DCNO (N1).

UNIFORM ALLOWANCE (ENLISTED)

For periods of continuous active duty for 180 days or less, an enlisted Reservist is not entitled to a clothing monetary allowance.

SPECIAL DUTY ASSIGNMENT PAY (ENLISTED)

Although selective by design, enlisted Reservists may receive Special Duty Assignment Pay for duty designated by SECNAV as extremely difficult or involving an unusual degree of responsibility. This includes active duty other than AT/ADT for less than 180 days.

DON'T FORGET ABOUT FITNESS AND PERFORMANCE REPORTS

The vast majority of Reservists performing active duty fall under the "general reporting requirement" of BUPERSINST 1610.10 in regard to Reservists on temporary active duty. For Reservists:

- On active duty for 10 days or less, no report is required.
- On active duty between 11 and 89 days, a Not Observed/Detachment of Individual report, with comments, should be prepared.

For periods of 90 days or more, specific reporting requirements are contained in Annex K, paragraphs K-4 and K-5 of BUPERSINST 1610.10.

CONTINUED HEALTH CARE BENEFIT PROGRAM (CHCBP)

Reservists who are released from active duty are eligible for temporary health care coverage beyond the 180 days authorized in Transitional Assistance Medical Program. CHCBP is not part of TRICARE but operates similar to TRICARE. Enrollment must occur within 60 days following loss of TRICARE or coverage under the Military Health System. Coverage extends to 18 months, and premiums of \$933 per quarter for individuals and \$1,996 for families are paid by the Reservist. More information can be found at: <www.tricare.osd.mil/chcbp>.

LIFELINES

Regardless of the question, LIFELines has the answers you need. LIFELines is an extensive listing of links and articles designed to keep families up to date on Navy life. Try LIFELines information services at: <www.lifelines.navy.mil>

**UNIFORMED
SERVICES
EMPLOYMENT
AND
REEMPLOYMENT
RIGHTS ACT
(USERRA)**

The Employer Support of the Guard and Reserve Web site, <www.esgr.org>, contains information helpful in understanding USERRA, including employment and reemployment rights and limitations; prohibitions; procedures for assistance, enforcement, and investigation; and miscellaneous provisions.

**SERVICE MEMBER'S
CIVIL RELIEF ACT
(SCRA)**

The Act provides protective measures for service members regarding certain financial obligations. A selected few include: Interest Rate Protection, capping rates for qualifying debts at six percent; Lease Termination Protection; and, Health Insurance Reinstatement.

CONTINGENCY OPERATION POLICY GUIDANCE

(MOBILIZATION AND DEMOBILIZATION)

The updated Operations Noble Eagle and Enduring Freedom policy guidance and demobilization policy guidance may be read in their entirety at <www.bupers.navy.mil> by clicking on "Volunteer and Recall News."

Why is this guidance important to Reservists? This guidance promulgates important information and procedures regarding the voluntary or involuntary recall of Reservists in support of a contingency operation and their eventual demobilization. Additionally, very few Reservists see or even know about the guidance, primarily because it is directed at processing and supported activities. If ever mobilized, review the recall policy guidance. Be aware of your benefits on your entry to active duty and upon your release.

What is covered? The guidance covers an array of topics necessary for the Naval Reserve Activity, servicing PSD, Mobilization Processing Site, and supported command to screen properly; gain to active duty; equip; transport a Reservist at their ultimate supported command; and, at a prescribed date, release the Reservist from active duty. Topic areas include: call-up authority; DOD guidance and benefits; stop-loss guidance; orders preparation; funding lines; screening and activation procedures; delay/deferment/exemption criteria; mobilization reporting requirements; theater training/equipment requirements; contingency operation entitlements; and demobilization guidance and procedures.

Who is responsible for the guidance? Ultimately, DCNO (N1) is responsible. However, there is a dedicated team within the Navy Personnel Command that does an extraordinary amount of work researching and ensuring that those benefits authorized for Reservists are made known. Since Operation Desert Storm, the Mobilization Plans and Policy Branch (PERS-4922) has done more to bring to light, enhance, and provide equity in the area of Reserve benefits than any other organization. Should you have policy questions regarding mobilization, call (901) 874-4553.

IT'S INEVITABLE . . .



Have You Prepared Properly?

By Tom McAtee

This article provides updated, researched information regarding planning for your own demise and actions to be taken upon the death of a retiree or veteran. As the retiree or veteran, you must look squarely into the mirror and understand that no matter how depressing it may be, your demise is a reality. How much unfinished business do you want to load onto a grieving family?

It is never too early to start planning, gathering important documents, writing down your personal instructions, and talking to those family members who will be the decision-makers regarding your affairs once you have passed away.

And for the families, we understand that the loss of a loved one is not an easy or light subject. However, bad things will continue to

happen; and we must prepare

ourselves. The Association

staff continually assists

surviving spouses or

family members of

members who have

passed away. In

these difficult times,

the last thing a

surviving spouse or

next of kin needs is

confusing or conflicting

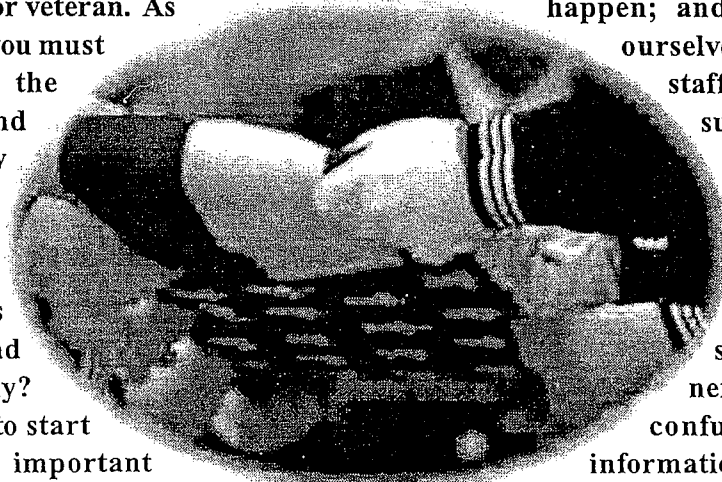
information about benefits/

entitlements. Survivor assistance is

one of the Association's most needed and

important benefits, and we are dedicated to

providing accurate advice.



DEATH IS A REALITY BUT INCAPACITATION IS A POSSIBILITY

In your planning, don't forget about the possibility that you could become incapacitated. What effect would it have on your family? Think about a Power of Attorney for Health Care and a Living Will. Consider a long-term care insurance policy as a way to protect against the depletion of family wealth.

PREPARE; DON'T LEAVE SURVIVORS GUESSING

Although you will never be able to prepare your surviving family members for your loss, you can prevent many of the dilemmas that will face them. Put in order your personal affairs – and don't keep it a secret. Share the fact that you have prepared a personal data file and its location with your spouse and family.

What to Discuss in Advance:

- Location of important documents.
- Desire to be an organ donor.
- Your desires in the case of incapacitation.
- Funds through accelerated benefits for terminally ill from SGLI/VGLI or commercial insurance.
- Final resting place: national or private cemetery, burial at sea, or scattered remains.
- Obituary notice.
- Your desires: military honors, burial flag, and VA provided headstone or marker.
- Power of Attorney, both general and for health care.
- RCSBP/SBP Annuity, whether immediate or deferred and percentage of retired pay.
- Confirm that proper beneficiaries are recorded on all insurance policies, SGLI, and RCSBP. All too often, former spouses become unintended beneficiaries.

What should be included in a personal data file? The following are general recommendations:

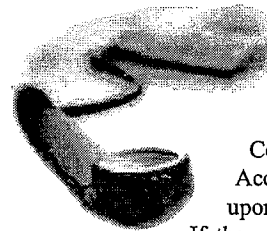
- Location of will or trust.
- Location of Power of Attorney.
- Civilian retirement plan annuity and contact information.
- Military service and retirement information such as DD214(s), RCSBP election, Notice of Eligibility for Retired Pay (NOE), retirement point total, medical record, retirement orders, and contact information for DFAS.
- Personal documents (and copies) such as birth certificate, marriage certificate, divorce decrees, adoption papers, and personal requests. Certain personal decisions such as cremation and burial at sea require signed documents.

- Tax file for recent federal, state, and property tax filings and payments.
- Insurance policies and contact information.
- Listing of bank accounts, stock portfolios, bonds, and other securities.
- Contact list of friends and work associates.
- Listing of singularly held accounts or property such as credit cards, accounts, safe deposit box, notarized vehicles, or real estate.
- Contents of safe deposit box.

And Don't Forget to:

- Preserve your life story. Take some time to write down the story of your life.
- If you're one of the few people who can put names to faces in old family photographs, take some time to label old photos.
- Buy or rent a video recorder and record at least several hours of your family talking and sharing. One day, one or more of you will be gone and the tape(s) will be treasured.

REPORTING THE DEATH OF A RETIREE OR VETERAN



When a retiree or veteran passes, the next of kin or executor of the estate should make timely calls to the Navy Reserve Personnel Command or the Defense Finance and Accounting Service (DFAS) depending upon the status of the retiree.

If the retiree is eligible for retired pay and benefits at age 60, but passed away prior to reaching age 60, contact the Navy Reserve Personnel Center (NRPC) central toll free number 1-866-250-4778. This notification will prompt an information package to be sent to you. Upon completion and return to NRPC, action will be taken in regard to Reserve Component Survivor Benefit Plan annuity (depending on election) and to forwarding to the eligible spouse an application for a new dependent ID card (DD1173-1 RED) reflecting his/her proper status as a surviving spouse. Remember, the surviving spouse's status will change again upon the retiree's 60th anniversary of birth. Upon this anniversary, the surviving spouse will be issued a DD1173 (TAN) ID card reflecting entitlement to TRICARE medical benefits until the surviving spouse's 65th birthday.

If the retiree is age 60 or beyond and receiving retirement pay, contact the Retired Casualty Section of DFAS at toll free 1-800-269-5170 or fax toll free 1-800-469-6559. Notification will start a review of the retiree's pay account and mailing of a survivor benefits packet to the next of kin. Packet will contain forms for unpaid retirement pay and Reserve Component Survivor Benefit Plan annuity. When returning forms, enclose a photocopy of the death certificate.

A Guide To Handle Affairs After A Death Of A Retiree or Veteran

The following guide provides both generalized and specific actions to be accomplished after the death with many of the actions expounded upon in the article. Should assistance ever be needed, do not hesitate to contact the Association toll free at 1-866-672-4968 or e-mail at admin@navy-reserve.org:

IMMEDIATE ACTIONS

☞ Notify the Defense Finance and Accounting Service to stop retired pay and start Survivor Benefit Plan at 1-800-269-5170.

Or (in all other cases, except veteran)

☞ Notify Naval Reserve Personnel Center to research eligibility for Survivor Benefit Plan and application for new ID card at 1-866-250-4778.

☞ Contact employer for existence of death benefits if deceased was still employed.

☞ Call the Social Security Administration at 1-800-772-1213 or visit a local Social Security Administration office. Stop Social Security payment and file for Lump Sum Death Benefit. Web site at www.ssa.gov.

☞ Contact Veterans Affairs Regional Office 1-800-827-1000. VA benefits are numerous and eligibility varies.

☞ Contact SGLI/VGLI at 1-800-419-1473 (Fax 1-877-832-4943) or e-mail osgli.claims@prudential.com for death and accelerated benefits claims only.

☞ Contact commercial life insurance companies having policies on the deceased. Request a claim form or ask for help from the local agent. Normally, a claim form, the policy, and a certified copy of the Death Certificate are required.

GENERALIZED ACTIONS

☞ Contact credit card companies of accounts held solely by the deceased. Remember, some credit card and charge accounts include a life insurance policy with them. If the card is held jointly, find out what documentation is required to change the account to the survivor's name.

☞ List assets that need to be changed from sole ownership (e.g., real estate, car titles, stocks, bonds, and other bank accounts). Probate proceedings may need to begin to accomplish legal ownership.

☞ Contact financial institutions where the deceased had a loan. Inquire if the loan was covered by the credit life and what needs to be done to file the appropriate claim.

☞ Collect bills and make sure all the credit obligations of the deceased are known.

☞ Contact retirement funds, including IRAs that the deceased was receiving, and apply for any benefits that are due. A Death Certificate is often required.

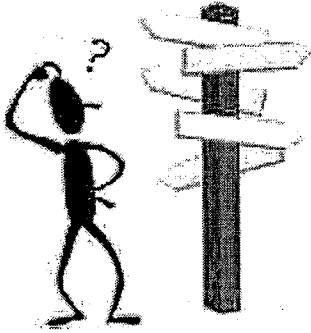
✗ Remove deceased's name from utilities, etc. In the case of an elderly survivor, the accounts may be placed in a joint account with another family member to help in processing a future estate.

☞ Contact health insurance companies to stop coverage on the deceased. Check for existence of a death-benefit rider.

☐ Maintain extra copies of the Death Certificate to send with your income tax returns and for future requests.

☒ Surrender the deceased's military identification card (ID) to the nearest ID card issuing facility. To find the nearest location and ID card return procedure, call 1-800-535-2699 or go to <http://www.dmdc.osd.mil/rsl>. Eligible surviving family members must obtain new ID cards.

DEATH BENEFITS SHOULD BE UNDERSTOOD



Reserve Survivor Benefit Plan (RCSBP) Annuity

As stated previously, the proper reporting of the death of a Reservist eligible for retired pay or a Reserve retiree will start the process for the designated survivor to receive monthly annuity. When the annuity starts depends upon the previously selected RCSBP option by the member:

Option A – election declined until age 60. If member dies before age 60, survivor receives no annuity.

Option B – deferred annuity, in which survivor receives annuity on the date of the member's 60th birthday.

Option C – immediate annuity, in which survivor receives annuity beginning the day after death of member. If no election was made at time of initial eligibility (normally upon receipt of NOE) and eligible dependents were listed on DEERS, then Option C, at maximum amount, is automatically elected under law. This automatic election became effective 1 January 2001.

Annuity Amount – normally would be based on the age of surviving spouse, but a recent change in law now makes both age of surviving spouse and year of member's death elements in the annuity amount. Currently, an annuitant under age 62 will receive 55 percent of the insured amount; age 62 and over will receive 40 percent of insured amount. On each 1 April of 2006, 2007, and 2008, those annuitants 62 and over will receive 5 percent more in their annuity payments until finally reaching 55 percent on 1 April 2008. This will end the Social Security Offset or so-called Widows Tax. Annuities and premiums increase annually by the cost-of-living adjustment (COLA) applied to military retired pay. The RCSBP premium remains to be paid by the annuitant for life, unlike the SBP premium which ceases upon death of member.

SBP Open Season – will begin 1 October 2005 and end 30 September 2006. For those who did not elect RCSBP or SBP when initially eligible, the open season is an opportunity to join the program. Additionally, for those who elected to insure an amount less than maximum, the open season will allow you to increase the base amount insured up to the maximum (total amount of monthly retired pay). However, joining the program late comes with a penalty cost. You will be required to pay all back premiums and interest in a single payment or in equal installments over 24 months. You must live for two years following election for the coverage to become fully effective.

Social Security Administration (SSA) Notification and Benefits

The death of an individual, whether a Social Security recipient or wage earner, has implications regarding the Social Security Administration. The death should be promptly reported by calling SSA toll free at 1-800-772-1213. This initial call will start the process of information and filing guidance for benefits. Additional information can be found at the SSA Web site at www.ssa.gov.

If the death involves a Social Security recipient, notify your financial institution (bank) and request that any deposit made after death and thereafter be returned to SSA. If benefits are paid by check, do not cash any checks received after death. Call the local SSA office about return of checks.

A Lump Sum Death Benefit of \$255 is payable, upon filing, to the surviving spouse or eligible child. No payment is made to adult children.

Department of Veteran's Affairs (VA) Benefits

The VA provides an array of benefits for deceased veterans and eligible surviving family members. Insofar as entitlement to VA benefits is concerned, most Navy retirees are veterans. VA benefits are exempt from federal income taxation. Certain burial-related benefits are provided, such as burial flags, government-issued markers, and memorial certificates. Additionally, VA operates a system of national cemeteries in which eligible veterans may be interred, inurned, or have a marker placed as a memorial. A DD214, retirement orders, or discharge paper is required to obtain any VA benefit.

Burial In National Cemeteries

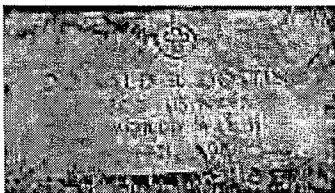
Burial in a national cemetery is an entitlement for veteran retirees, and includes opening and closing of the grave and perpetual care. The only other casketed burials that can be accommodated at some national cemeteries are those of spouses or dependent children of veterans already buried in the cemetery. If an eligible family member dies first, the member must sign an agreement to be buried in the same grave eventually. Grave sites cannot be reserved. Most cemeteries can accommodate burials of cremated remains. Contact the Director of the national cemetery where burial is desired. The local VA office has a list of national cemeteries or go to www.va.gov or call 1-800-827-1000.

NOTE: Arlington National Cemetery has stricter eligibility requirements than other national cemeteries.

Burial Flags

An American flag is available to drape the casket of a veteran who was discharged under conditions other than dishonorable. Commonly, funeral directors obtain the flag on behalf of the survivors if the deceased is an eligible veteran. A flag may also be issued for memorial purposes to close relatives other than widow(er) or child(ren). After the funeral service, the flag may be given to the next of kin or a close friend of the deceased. Flags are issued after a claim is filed with any VA regional office, VA national cemetery, or most local post offices.

Grave Markers



When a veteran is buried in a national, state, or military cemetery, a marker is erected, without cost to the family, upon completion of an application by any surviving family member. The permanent monument may be an upright headstone, flat bronze, granite, or marble marker, or a bronze niche marker. Standard inscriptions include name, branch of service, year of birth and death. Optional inscriptions include rank or rate, month and day of dates of birth and death, valor awards (Purple Heart, Distinguished Service Cross, Navy Cross, Air Force Cross, and Silver Star) if applicable, religious emblem, and war service (World War II, etc.). For specific information, call 1-800-697-6947 or write:

**Office of Memorial Programs (402E)
National Cemetery System
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420**

Inscriptions listed above are free, but additional inscriptions are at personal expense. When burial is in a private cemetery and a marker is desired, VA Form 40-1330 (obtained from any VA office) must be filled out completely by the spouse or closest relative and mailed to the address in this paragraph. The marker will be shipped free to a designated cemetery. It should be noted that the only inscription for the Navy is "US NAVY." There is no "USNR" inscription authorized.

A memorial marker to be placed in a veteran's national, state, military, or private cemetery to commemorate a veteran whose remains were buried at sea (by own choice) or scattered without interment may be requested via VA Form 40-1330.

Presidential Memorial Certificate

This long-standing program provides a certificate, prepared by the VA, bearing the President's signature and expressing the country's grateful recognition of the veteran's service. Those eligible to receive the certificate include next of kin, relative, or friend. Certificates may be issued to more than one eligible person, up to ten (10) certificates.

Request a Presidential Memorial Certificate, in person or through the mail, from any VA Regional Office. Retirement orders or a DD214 provide the best documentation to establish honorable service.

Plot/Interment Allowance

A \$150 plot or interment allowance is available in cases involving the payment of the \$300 non-service-connected allowance specified below.

Non-Service-Connected Death

Eligibility provisions exist for a \$300 burial allowance to be paid if the veteran, prior to death, was receiving a VA disability

pension or compensation payments, or died while hospitalized in a VA facility.

Service-Connected Death

If a veteran dies as a result of a disability related to military service, up to \$1,500 may be paid to assist with burial expenses.

Dependency and Indemnity Compensation (DIC)

DIC is administered by the Department of Veteran's Affairs and payable to surviving spouses who did not remarry by age 57, certain children, and low-income parents of Reservists or retirees who die from:

- A disease or injury incurred or aggravated while on active duty or active duty for training.
- An injury incurred or aggravated in line of duty while on inactive duty training.
- A disability compensated by the Department of Veteran's Affairs.

DIC payments to a surviving spouse are payable for life (provided spouse does not remarry before age 57). To apply for DIC, the claim form VA Form 21-534 must be submitted. Documentation to support your request for DIC payments would, at a minimum, be military medical record and any VA disability documentation. DIC payments are excluded from taxation.

Burial at Sea

Navy retirees and their dependents are entitled to burial at sea. A burial at sea decision should be in writing. If burial at sea preference was not put in writing by the retired member, the individual responsible for disposition of the remains may authorize burial at sea. Timely contact should be established with:

**Office of Medical/Dental Affairs
(MEDDEN Affairs)
Mortuary Affairs, Bldg. 38H
Great Lakes, IL 60088-5200
Tel: 1-800-647-6676, Select option 4**

Specific documents must be submitted to the commanding officer of the vessel/aircraft that will conduct the burial at sea: (1) certificate of cremation or a transit permit issued by the appropriate civil authorities at the place of death or civil death certificate; and (2) a signed authorization for committal from the primary next of kin or executor of the estate.

This authorization should include the decedent's full name, grade, Social Security number, branch of service; date of retirement or dates of service and date of death; type of religious service desired; whether scattering of cremains or committal of casketed remains is desired from a vessel; and the body of water in which the cremains/remains should be committed.

Alternatives to burial at sea from a naval vessel/aircraft are burial at sea from a United States Coast Guard (USCG) vessel or a private yacht service.

Accelerated Benefits for Terminally Ill

Servicemen's Group Life Insurance (SGLI) and Veterans Group Life Insurance (VGLI), as with certain commercial insurance policies, offer accelerated benefits to the terminally ill. Terminally ill is a written medical prognosis of nine (9) months or less to live. For SGLI and VGLI, up to 50 percent of

the policy coverage may be paid out in a lump sum to the insured. This payment is not taxable. The insured must submit the Servicemember/Veteran Accelerated Benefit Option Form 8284A. The form and information can be obtained at www.insurance.va.gov or by calling toll free 1-800-419-1473.

OTHER USEFUL INFORMATION

NON-DUTY STATUS DEATH OF A RESERVIST (WITHOUT NOE)

In the event of an unfortunate, non-duty death of a Reservist, such as an industrial accident at place of employment or automobile accident, the only benefit, beyond those benefits mentioned above in the Death Benefits section, is the payment of elected SGLI policy amount, normally \$400,000.

SPOUSE'S ID CARD MILESTONES

Renewal

- One month prior reaching age 65.
- After age 65, every four (4) years, until age 75 at which time ID card becomes permanent.
- Upon death of sponsor.

Surrender

- Upon remarriage.

EFFECT OF REMARRIAGE ON SURVIVOR BENEFITS

IDENTIFICATION CARD – Upon remarriage, ID card must be surrendered. Therefore, without ID card, no commissary, exchange, or base privileges authorized.

TRICARE – Upon remarriage, TRICARE benefit terminates.

TRICARE FOR LIFE (TFL) – Upon remarriage, TFL benefit terminates.

SOCIAL SECURITY – Remarriage at age 60 or older has no effects on Social Security benefit.

SBP ANNUITY – Remarriage at age 55 or older has no effect on benefit.

DEPENDENCY and INDEMNITY COMPENSATION (DIC) – Remarriage before age 57 will terminate benefit. Subsequent marriage ends, DIC will be reinstated.

TRICARE RETIREE DENTAL PROGRAM – Upon remarriage, eligibility terminates.

WHERE CAN I GET HELP?

Naval Reserve Association
1619 King Street
Alexandria, VA 22314
Tel: 1-866-672-4968
E-mail: admin@navy-reserve.org

Navy Mutual Aid Association
Henderson Hall
29 Carpenter Road
Arlington, VA 22212
Tel: 1-800-629-6011
E-mail: counselor@navymutual.org

Navy/Marine Corps Relief Society
801 North Randolph St.
Room 1228
Arlington, VA 22203-1989
Tel: (703) 696-4904

**Retired Activities Office (RAO) or
Family Service Center (FSC)** in
your local area. Call 1-866-827-5672 or
e-mail mill_retiredactivities@navy.mil
for the nearest location.

DON'T DELAY MAKING CLAIMS

The U.S. Court of Federal Claims went against the widow of a retired Naval Reservist for SBP payments. The widow filed for SBP nearly 15 years after the death of her husband claiming she was not aware of the SBP agreement executed by her husband. The court did not hear the case because:

- She should have known about the SBP agreement because she signed it.
- The Navy had no legal responsibility to inform her.
- The six-year limitation for filing a federal claim expired.

Moral of the story: maintain a complete personal document folder with an itemized inventory of important papers.

ENDURING ENTITLEMENTS				
ENTITLEMENT FOR ELIGIBLE SURVIVOR(S)	UPON DEATH, IF MEMBER WAS:			
	RETIRED WITH PAY	GRAY AREA RETIREE OR RESERVIST WITH NOE	RESERVIST, DUTY STATUS DEATH	RESERVIST, NO NOE AND DEATH NOT DUTY RELATED
ID CARD	YES DD1173 (TAN)	YES DD1173-1 (RED)	YES DD1173(TAN)	NO
MEDICAL CARE	YES TRICARE TO AGE 65 OR ELIGIBILITY TERMINATION	YES TRICARE STARTS ON 60 TH BIRTHDAY OF MEMBER	YES TRICARE TO AGE 65 OR ELIGIBILITY TERMINATION	NO
UNLIMITED USE OF EXCHANGE	YES	YES	YES	NO
COMMISSARY	YES UNLIMITED	YES UNLIMITED	YES UNLIMITED	NO
TRICARE RETIREE DENTAL PROGRAM	YES PREMIUM-BASED	YES PREMIUM-BASED	YES PREMIUM-BASED	NO
SPACE "A" TRAVEL	NO	NO	NO	NO
RECREATIONAL LODGING	YES	YES	YES	NO
LEGAL ASSISTANCE (LIMITED)	YES	YES	YES	NO

NOTE: Medicare begins at age 65 with TRICARE as second payee.

APPENDIX I

USEFUL MILITARY AND MILITARY RELATED WEBSITES

<http://www.moaa.org> – Military Officers Association of America. Formerly The Retired Officers Association, this organization is composed of both active duty and reserve members, predominantly retirees. This site provides a great deal of useful information on retirement, active duty and pending Congressional legislative issues.

<http://www.navy-reserve.org> – Naval Reserve Association, a Navy Reserve related organization whose membership consists mainly of Navy Reserve officers, but is open to all. Has good general military reserve information, mostly directed to Navy Reserve officers.

<http://www.roa.org> – Reserve Officers Association serves U.S. military Reserve officers of all branches of service. Junior officer members are automatically members of the CIOR – an international community of junior military officer member of Reserve officer organizations from NATO states around the world.

www.ssa.gov -- Social Security website.

<http://www.militaryconnection.com> – Web site started in 1999 by a woman-owned business group in California. It is the most complete site for all U.S. military services that you will find. This site really brings it all together in one place

<http://www.militaryonesource.com> – Military One Source. A relatively new on in presence, Military One Source provides you with around-the-clock, toll-free information and referral telephone service on an incredible variety of topics. This site seems to represent the long-overdue consolidation of a number of resources and should certainly be one that you explore and one whose address you share with other spouses.

<http://www.militaryhomefront.dod.mil> – DoD's Military Homefront. Excellent site that specifically caters to both families and leadership of our Armed Forces. It is the official DoD Web site tasked with providing quality of life (QoL) information and it succeeds admirably. In addition, to providing links to a number of QoL resources, it also provides users with easy access to service specific information.

<http://www.nmfa.org> – National Military Family Association (NMFA). A staunch supporter of military families since 1969, the NMFA Web site offers links to a number of subjects, including deployment, education, family life, benefits, health care, and finance.

<http://www.militarymoney.com> – Military Money. Created as a result of DoD's Financial Readiness Campaign via a partnership between the NMFA and INCharge Institute of America, Inc., Military Money provides its Web site users with an interesting array of topics from which to choose. Whether you want to learn about common tax deductions or have a refresher course on military spouse employment preference, Military Money strives to fill the financial niche.

<http://www.cinchouse.com> – Cinchouse. This site bills itself as the nonprofit community of military wives and women. It is clearly much more than that. Full of unbiased news, advice, and humor, it is a must-mark site for any military spouse. Message boards, chat rooms, book clubs, deployment tips, and inspiration advice that doubles as sanity depending on where you mouse sits.

<http://www.firstgov.gov> – This should be your first stop in finding anything related to the U.S. government.

<http://www.afvclub.com> – This Web site offers opportunities for military members to get vacation packages on the cheap. The SM can even send gift certificates for \$299/wk vacation condos to civilian friends and family.

<http://www.navyonesource.com> – Provides you with useful information and resources to help balance work and family life. As Aristotle once said, "Balance or moderation is the key to a healthy life."

<http://navyreserve.navy.mil> – Home site of Commander, Navy Reserve Force. Important information and links for all Navy Reservists.

<http://www.dod.mil/dfas> - Home to the Defense Finance and Accounting Service. The *myPay* link contains the SM's monthly Leave and Earnings Statements (LES), as well as Travel Advice of Payment (AOP) where one will see reimbursed travel claims.

<http://www.nko.navy.mil> – Navy Knowledge Online (NKO), also known as the Sea Warrior Portal, is the place for a Navy member to check on his/her career and engage with teams in a knowledge-sharing environment, including chat rooms.

<https://www.bol.navy.mil> – Bureau of Naval Personnel (BUPERS). The place for the Navy SM to check his/her service record ARPR/ASOSH, fitrep/ eval history, advancements, and more.

<https://nows.cnr.navy.mil/nrows> - Navy Reserve Order Writing System (NROWS) is where Sailors input requests or all types of order such as AT, ADT, IDTT.

<http://at-awareness.org> – Antiterrorism training on-line.

<https://awards.navy.mil> – A Chief of Naval Operations (CNO) sponsored Web site. Everthing you ever wanted to know about Navy awards. Listings of latest NAVADMINS regarding awards.