

Overview of North Carolina Divorce and Separation and Legal Assistance Services

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DISCLAIMER: The information provided herein is intended to be useful, accurate, and up to date. However, there is no substitute for consultation with qualified legal counsel.

Furthermore, it is possible that information that is accurate as of the date this article was posted may become inaccurate thereafter due to appellate court decisions and the enactment or amendment of new laws, regulations, and policies. This article cites additional on-line resources (mostly government sites) believed to contain accurate information. However, the author of this article does not guarantee the continuing accuracy of such information and has no ability to correct any errors that might be contained therein. Finally, it is noted that a great deal of information is presented here, with the intent of being useful to attorneys as well as non-attorneys. However, this article is not, nor is intended to be, a comprehensive treatise on family law. Again, while this article can assist, there is no substitute for personal consultation with an attorney

1. Purpose. This article provides an overview of divorce and separation, with emphasis on separation agreements and the law of North Carolina. Information is provided to help readers understand issues arising in divorce and to assist in arriving at an equitable settlement of those issues. The legal assistance office provides attorney consultation, drafts marital separation agreements, prepares uncontested North Carolina divorce petitions for those who are able to arrive at a separation agreement, and provides instruction concerning divorce filing, service of process, and courtroom procedures. The legal assistance office does not provide in-court divorce litigation assistance. The specific topics covered are listed below:

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2. Divorce Grounds and Jurisdiction.

a. Grounds for Divorce Generally. In order for a judge to order a couple to be divorced, there must be a legal reason, or “grounds” for divorce as specified in the relevant state’s laws. In so-called “no fault” divorce states, such as California, Arizona, and others, “irreconcilable differences,” or some variant thereof, is sufficient reason for divorce.

Essentially, if one or both of the parties doesn’t want to be married anymore, that is grounds for divorce in such states. Other states require fault, such as adultery, abandonment, or cruelty. Still other states, such as North Carolina, require that the parties be separated for a specified length of time as a condition of obtaining a divorce. Some states have a combination of grounds; for example, several fault grounds as well as separation for the requisite period of time irrespective of fault. You and your attorney can review the grounds for divorce in your state.

b. Grounds for Divorce in North Carolina. There are only two grounds for absolute divorce in this state. First, divorce may be granted in those exceedingly rare cases where one or both of the parties is incurably insane and the parties have lived apart for three years due to such insanity (N.C. Gen Stat 50-5.1). The only other grounds for absolute divorce, and the grounds used in the overwhelming majority of cases, is that the parties have lived separate and apart in excess of one year (N.C. Gen Stat 50-6). There is no requirement that there be a written separation agreement, only that the parties live in separate places continuously for a year with the intent not to resume the marital relationship. Resumption of cohabitation starts the clock all over again. Example: The parties live separately from January 1 through June 30, 2017, a period of six months. They reconcile and live together in the marital home for the month of July, then split up again on August 1, 2017. The earliest they can get a divorce in North Carolina, assuming they continue to live separately, is August 3, 2018. It is noted that, by statute, “isolated incidents of sexual intercourse between the parties shall not toll the statutory period required for divorce predicated on separation of one year”. For the purpose of North Carolina family law, the period of separation begins when both of the following two conditions exist: (i) the parties reside in separate residences, and (ii) at least one of the parties does not wish to resume the marital relationship.

c. Jurisdiction. In order to issue a decree of divorce, a court must have the power and authority, or jurisdiction, to hear and decide the matter. Each state has a statute that defines which divorce cases its courts can hear. Typically, divorce jurisdiction is based on residence of one or both of the parties. For example, North Carolina law provides that its courts have authority to decide a divorce case if either the husband or the wife was a legal resident of the state for at least six months preceding the filing of the divorce petition (NC Gen Stat 50-8). Note that the authority of the court to grant a divorce and divide marital property does not necessarily mean that the court also has authority to divide a military pension or to issue orders for child support, custody, and visitation. Authority to decide those issues is based on another statute and typically turns on where the child resides. Generally, if a court has already issued a lawful order concerning one of these child related issues, that court retains exclusive

jurisdiction to do so in the future unless all the parties move from that state. Generally, if there are no existing orders relating to the child, then the state in which the child has resided for the last six months has jurisdiction over such matters. However, the law of most states, including North Carolina, allow the state to take jurisdiction over child custody issues regardless of other circumstances in the event of a true, demonstrable emergency. Finally, the authority to divide military pension is governed by the Uniformed Services Former Spouse Protection Act, which is discussed in more detail at paragraph 11, below.

3. Separation Agreements.

a. Generally. A marital separation agreement is a contract between the estranged spouses setting forth their rights and obligations concerning the marital relationship, such as: distribution of assets and debts, spousal and child support, child custody and visitation. Essentially, the separation agreement resolves issues that would otherwise need to be resolved by a divorce court judge. If one of the parties fails to meet his/her obligations, that party may be sued for breach of contract for the damage thereby caused. Additionally, a service member who fails to comply with the dependent support provisions of a valid separation agreement may be subject to administrative and even criminal sanction. As stated above, parties who have lived separately in excess of one year meet the grounds for divorce in North Carolina, regardless of whether they have executed a formal, written separation agreement. Separation agreements are extremely useful in two general ways.

(1) First, the agreement sets out in writing what each party must do during the period of separation. Having such an agreement is far preferable to the alternative: ambiguity as to obligations and the high potential for constant bickering as to who pays which bills, what financial support is owed, when visitation may be exercised, who lives in the marital home, and so on.

(2) Secondly, if the parties are able to reach agreement, divorce can usually be obtained after the requisite separation period with a minimum of time, expense, effort, and heartache. One of the parties will typically file a divorce petition asking the court to incorporate the separation agreement; that is, include the terms of the separation agreement in the judicial order. Presumably, since the parties agreed to the terms in arriving at the separation agreement, the petition would go unopposed for an uncontested divorce. After the agreement is incorporated, it becomes a court order, enforceable through contempt of court penalties. If North Carolina has jurisdiction over the case, the Camp Lejeune legal assistance office can prepare not only the separation agreement, but also the divorce petition and related papers, and provide instruction concerning filing, service of process, and courtroom procedure.

b. Separation Agreement Terms. There are two ways to get a divorce, the hard way or the much harder way. The parties can fight each other in court, pursuing a long, expensive, gut wrenching contested case. When all the evidence is in and all the hearings are finally over, a judge decides what is reasonable and makes a judicial order to that effect. Or, the parties can decide for themselves what is reasonable, sign a separation agreement, and get that agreement incorporated into a divorce decree. Agreements between the parties can address issues concerning alimony, post separation support, distribution of marital assets,

allocation of marital debt, child custody and visitation, and child support. Such agreements may include terms addressing the division of military retired pay, life and health insurance, and the survivor benefit plan (SBP). Such agreements may even include an agreement concerning the child tax exemptions and college expenses for children.

c. Separation Agreement Worksheet. After consultation with counsel, the legal assistance office will provide clients with a separation agreement worksheet. Essentially, the worksheet lists items that the parties must address and agree upon in order to have a useful separation agreement. Once the parties agree on the terms, the client may return the completed worksheet to the legal assistance office-no appointment is necessary for this purpose. At that time, a follow- up appointment will be scheduled for the client to meet with a legal assistance attorney. By the time of that appointment, the questions and answers in the worksheet will have been converted into a draft agreement. Client and counsel will review the draft agreement to ensure the client understands and agrees to its terms. Multiple unsigned copies will be printed out so that duplicate originals can be executed: one for each party, one for the court, and one for the legal assistance office. In order for the document to become a valid separation agreement under North Carolina law, both spouses must sign it and both signatures must be properly notarized. [NC Gen Stat 50-20d, NC Gen Stat 52-10.1]. The Camp Lejeune legal assistance office has several notaries familiar with the process and required language. While the office cannot represent conflicting sides of a legal dispute, the office can provide notarization services to opposing parties. The parties need not sign the agreement at the same time.

d. Coming to Agreement. The separation agreement, like any other contract, is a meeting of the minds, ad will generally involve some give and take between the parties negotiating it. Making unreasonable demands is one way to ensure that there is no agreement. On the other hand, it is unwise to make unreasonable, major concessions merely to obtain agreement. By learning the rules, the parties can estimate what a court would do if the case were contested and will be better able to determine what is a reasonable.

4. Marine Corps Dependent Support Order.

a. Overview. Volume 9 of Marine Corps Order 5800.16A (Legal Services Administration Manual) provides detailed instruction concerning the obligation of Marines to provide support to dependents. This text of this Order can be found on line at the Marine Corps Publications Electronic Library:

<https://www.marines.mil/News/Publications/MCPEL/Custompubstatus/3000/> The Order provides that Marines must comply with all court orders that address the issue and any marital separation agreement. The Order sets out interim support requirements in the absence of court order or separation agreement, and also sets forth certain circumstances under which the Commanding Officer who has special court martial convening authority (usually a battalion or squadron commander) may eliminate or reduce the interim support requirement. [Note that other orders regulate member entitlement to dependent allowances. Members who provide inadequate support forfeit dependent allowances, and in no case may the member receive dependent allowances and at the same time pay support less than the applicable BAH-DIFF rate. Thus, for example, a member may be relieved of providing any support by the terms of a valid separation agreement, but that member cannot at the same time receive

dependent allowances. See, Joint Federal Travel Regulation, chapter 10, Part B, section 10106. Failure to comply results in forfeiture of dependent allowances for the period of inadequate support.

b. Interim Support. In accordance with the Legal Services Administration Manual (LSAM), all Marines must provide support to their dependents, and failure to do so may subject them to administrative or even criminal sanction. Marines must comply with court orders or separation agreements for support. If no such order or agreement exists, *and the spouse makes a complaint of nonsupport to the commanding officer*, the Marine must provide a portion of the Basic Allowance for Housing depending on the number of dependents entitled to support (up to a maximum of 1/3 of the Marine's gross pay) as follows:

| # of dependents entitled to support | share of monthly BAH / OHA per requesting family member |
|--|--|
| 1 | 1/ 2 |
| 2 | 1/3 |
| 3 | 1 / 4 |
| 4 | 1 / 5 |
| 5 | 1 / 6 |
| 6 or more | 1/7 or etc. |

BAH amounts are listed in the monthly Leave and Earnings Statement (LES). BAH amounts can also be found on line at the following web site
<http://www.defensetravel.dod.mil/site/bah.cfm> (or just Google "Pentagon BAH Calculator"). Be prepared to provide the rank of the service member and the zip code of the area you wish to find BAH rates for.

c. Reduction of Interim Support Amounts. In accordance with the LSAM, the Marine can request that the Commanding Officer reduce the interim support obligation. The Marine has no authority to himself waive or diminish any requirements of the Order. It is up to the Marine to provide the Commander with sufficient information and documentation to establish a basis for reduction of the interim support requirement. The Commanding Officer (Special Court-Martial Convening Authority) may, but is not required to, reduce the interim support obligation in only four very narrow circumstances, as follows:

(1) The spouse requesting support has a gross income greater than that of the gross income of the supporting spouse. This basis may relieve the Marine from paying spousal support but does not relieve the Marine from providing support to a child that would otherwise be required.

(2) The service member has already provided such uninterrupted financial support for twelve months or more and has not attempted to delay divorce proceedings by evading service of process. This basis may relieve the Marine from paying spousal support but does not relieve the Marine from providing support to a child that would otherwise be required.

(3) The service member is the victim of a substantiated instance of physical abuse of a spouse. This basis may relieve the Marine from paying spousal support but does not relieve the Marine from providing support to a child that would otherwise be required.

(4) The service member is paying recurring monthly expenses of the dependent such reduction of the support requirement is appropriate. For example, a Marine who is making a monthly rent payment of \$600 for a residence that is used exclusively by the spouse may request a reduction in the support amount by the \$600 that the Marine pays directly to the landlord to satisfy the rent requirements. Service members can receive either adequate base quarters or BAH, but not both. Accordingly, if the Marine's family resides in government housing and the Marine does not, and as a result the Marine forfeits BAH, the Marine may request reduction or elimination of dependent support requirement. The CO has the discretion to grant, grant in part, or deny such a request.

(5) The next senior officer in the chain of command may also reduce or eliminate interim dependent support requirements when doing so "is a matter of fundamental fairness, given the totality of the circumstances." The term "fundamental fairness," is not defined; however, the CO must consult the Staff Judge Advocate, prior to making such a determination.

f. Typical Separation Agreement Post Separation Support/ Alimony Provision. Post separation support (PSS) is money one spouse pays to support the other spouse during the separation period and prior to the decree of divorce. Alimony is money one spouse pays to support the other after the divorce. Both are usually paid in monthly amounts, though the parties can agree, or the court can order, a single lump sum payment. In many of the cases seen at the Legal Assistance Office, neither spouse will have much of a claim for alimony / PSS given the statutory factors to be considered. The marriages are often of short duration and/or both spouses are capable of supporting themselves. There may be suspicions of infidelity, but they can't be proved in court or else the aggrieved party does not desire to go through the time and expense of a contested case for an uncertain award. (Further, even if the court is convinced that the supporting spouse committed pre-separation Illicit Sexual Behavior, the amount and duration of the award is up to the judge.) The bottom line is this: the military service member does not want to pay one penny more than the USMC order requires because a court probably won't order PSS or alimony. On the other hand, the civilian spouse does not want to receive one penny less than already entitled under the Order. In such cases, a reasonable resolution of this problem is often to agree to PSS in the amount and duration dictated by the relevant military order, with no alimony.

5. Alimony.

a. Generally. As noted above, alimony is post-divorce spousal support, usually paid in monthly installments. NC law (N.C. Gen Stat 50-16.3A) lists factors in determining whether and how much alimony will be ordered, and for how long. Given the population base of military clientele, many legal assistance clients are young, and have been married a relatively short period of time to a healthy, reasonably employable person of like age. Long term alimony in such cases is highly unlikely. Any alimony at all is not particularly likely, except in cases of pre-separation sexual misconduct, which will be discussed later. Unlike child

support amounts, which are generally determined with reference to specific, numerical guidelines, the amount and duration of court ordered alimony is far harder to predict. North Carolina law gives judges wide latitude in determining alimony, and allows the consideration of all of the factors listed below:

- (1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;
- (2) The relative earnings and earning capacities of the spouses;
- (3) The ages and the physical, mental, and emotional conditions of the spouses;
- (4) The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;
- (5) The duration of the marriage;
- (6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;
- (8) The standard of living of the spouses established during the marriage;
- (9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;
- (10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;
- (11) The property brought to the marriage by either spouse;
- (12) The contribution of a spouse as homemaker;
- (13) The relative needs of the spouses;
- (14) The federal, State, and local tax ramifications of the alimony award;
- (15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.
- (16) The fact that income received by either party was previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties' marital or divisible property.

b. Effect of Illicit Sexual Behavior on Alimony Award. North Carolina law [N.C. Gen Stat 50-16.3 A (a)] provides that, if the supported spouse engages in pre-separation Illicit Sexual Behavior (ISB) and the supporting spouse has not, than alimony shall be barred, regardless of other factors. If the supporting spouse engaged in pre-separation ISB, and the supported spouse has not, then alimony shall be awarded. The amount and duration of the alimony award is at the discretion of the court. If both parties engaged in ISB, then alimony, if any, is at the discretion of the court, based not on ISB, but on the above-mentioned economic factors. Either side may elect jury trial on the issue of whether ISB occurred.

6. Health Care for the Spouse/Former Spouse.

a. Generally. A separation agreement may address responsibility for the payment of health care expenses. The health care expense issue is composed of the following essential component questions: (i) Will there be any requirement for one spouse to provide health insurance for the other spouse? (ii) Who is going to pay for any health care costs that are not covered by insurance? Are these costs to be born only by one party? If not, what percentage does each spouse contribute?

b. Eligibility for Military Health Care.

(1) Spouse of active duty service member. Regardless of their separation, the civilian spouse of an active duty service member retains the status of military dependent and is therefore eligible for military medical and dental benefits until such time as a final decree of divorce is issued.

(2) 20/20/20 Former Spouse. In some cases, the former spouse continues to be eligible for such benefits under the Uniformed Services Former Spouse Protection Act (USFSPA) even after divorce. In accordance with 10 USC 1076, dependents of service members and retirees are entitled to medical care. The term “dependent” is defined at 10 USC 1072. A “dependent” includes a former spouse of a service member when all of the following conditions are met: (i) the former spouse has not remarried, (ii) the former spouse does not have medical coverage under an employer-sponsored health care plan, (iii) the service member served creditably for at least twenty years, (iv) the former spouse was married to the service member for at least twenty years, and (v) the marriage overlapped military service by at least twenty years. Collectively, these conditions are sometimes referred to as the 20/20/20 test.

(3) 20/20/15 Former Spouses. Former spouses who meet conditions (i) and (ii) but do not meet the 20/20/20 test because the marriage did not overlap military service by at least 20 years, may nonetheless be entitled to permanent medical benefits if they meet the 20/20/15 test.; i.e., the service member performed at least 20 years of creditable service, the marriage lasted at least twenty years, the marriage overlapped military service by at least 15 years, and, the final decree of divorce was entered prior to April 1, 1985. If the 20/20/15 test is met but the divorce was after April 1, 1985, then the former spouse is only entitled to temporary transitional medical benefits and the right to convert to a private health plan set up by the Department of Defense [10 USC 1072]. See the Tricare website for further information

concerning military health care eligibility. Paragraph 19 below addresses health care for the minor children of the marriage.

7. Life Insurance with the former spouse as beneficiary.

a. Generally. The parties may want to make some provision to ensure that a former spouse remains financially stable even in the event of the death of the supporting spouse. Thus, separation agreements or court orders may require one spouse to maintain a certain amount of life insurance with the other spouse as beneficiary. Such provisions may be appropriate where one spouse is obligated to provide long-term payments to the other spouse, such as where long term alimony is likely. Or, the parties may desire such a provision where the former dependent spouse will be entitled to a substantial portion of a military pension. Another potential stream of income that can be used to replace pay/benefits lost when the military spouse dies is the Survivor Benefit Plan (SBP). This tool can be used in place of or in conjunction with life insurance. See paragraph 14 below for additional information about SBP.

b. Enforcement. Parties electing to have a life insurance requirement as part of the separation agreement may want to consider additional provisions to ensure that the obligated spouse actually complies with the obligation. Such provisions generally come in two forms: requiring the obligated spouse to provide appropriate documentation that the life insurance policy is in force (or granting the beneficiary spouse access to such documents), or giving control / ownership of the policy to the benefited spouse.

c. SGLI & the Ridgeway Problem. The most obvious source of life insurance, and is the Serviceman's Group Life Insurance (SGLI), \$400,000 term insurance made available to active duty service members for about \$26 per month. SGLI provides a great deal of information on line concerning its products and procedures.

(1) The Ridgeway Problem. In *Ridgway v Ridgway*, 454 U.S. 46, 102 S.Ct 49, 70 L.Ed 2d 39 (1981), the U.S. Supreme Court considered the case of U.S. Army Sergeant Richard Ridgway, who violated a court order that required him to maintain his former spouse, April Ridgway, as the SGLI beneficiary. Instead, he remarried and filled out an SGLI election form giving the life insurance proceeds to his new spouse. When Sergeant Ridgway died, April asked the court to direct that she receive the SGLI proceeds, because that's what would have happened had Sergeant Ridgway complied with the divorce decree. The U.S. Supreme Court disagreed, holding that Federal law gave the beneficiary designation authority solely to the service member. The court therefore had no authority to direct someone else as the SGLI beneficiary. April Ridgeway could make a claim against assets in the deceased's estate, but she was not going to receive the life insurance proceeds.

(2) Responses to Ridgeway. The parties may attempt to cope with the Ridgeway problem by requiring the payor spouse to provide evidence of the beneficiary designation, or to authorize the beneficiary spouse access to records concerning SGLI. However, this method of protection requires constant vigilance by the beneficiary spouse. A more secure (and often more expensive) method of enforcing the obligation is to require the obligor to purchase private, commercial insurance. When such private insurance policies are directed by court order, Ridgeway does not apply and courts can later direct that the former spouse receive the

insurance proceeds even if the obligor spouse named some other beneficiary. The most secure means of enforcing the life insurance obligation is to require private, commercial insurance and to make the former spouse not only the beneficiary, but also the owner of the policy. Only the owner of the policy has authority to change the beneficiary.

8. Equitable Distribution of Property

a. Generally. North Carolina General Statute 50-20 gives North Carolina judges the authority to take property owned by the divorcing spouses and split it between the parties. The fact that property is titled in the name of one of the parties has no effect at all on the judge's ability to make an award. For example, an automobile registered and titled solely in the husband's name can be allocated to the wife if it the court sees fit to do so North Carolina law directs judges to make a fair, or "equitable" distribution of property. The law presumes that an equal division of the property is equitable and the court must make an equal distribution unless the judge determines that an equal distribution is not equitable. In determining what is equitable, the court must weigh a variety of factors, including, but not limited to: the respective incomes of the parties, any child support obligations from a previous marriage, the length of the marriage, the age and health of the respective parties, the need of the spouse with custody of the child to occupy the marital residence, contributions of one spouse to help educate the other spouse, the tax consequences of property division, and acts of the spouse causing an increase or decrease in the value of marital property.

b. Marital and Divisible Property. The court may divide two categories of property, "marital" and "divisible."

(1) Marital Property. Marital property includes all property obtained by either or both of the parties during the marriage and prior to the date of separation. Marital property does not include gifts from third parties solely to one spouse or property inherited solely by one of the spouses.

(2) Divisible Property. North Carolina judges are also authorized to divide "divisible property." Divisible property includes two types of property. First, it includes the change in value of marital property between the time of the separation and the time of the court's order for passive reasons; that is, increases in value that did not result from the labor or effort of either of the parties. Example: H purchases 100 shares of XYZ stock during the marriage and prior to separation. After separation but before the court's order dividing the property, the XYZ Corporation discovers a cure for cancer and its stock price skyrockets. The post separation increase in the value of the stock was passive; it was not created by any work completed by either of the spouses. The increase is considered divisible property. Secondly, divisible property includes receipts obtained after separation derived from labor of either of the parties prior to separation. Example: W is a real estate broker who earns a commission on a house she sold prior to separation. W actually receives the commission after the date of separation. The real estate commission is divisible property.

c. Dividing Tangible Personal Property in a Separation Agreement. Rather than requiring the court to divide property, the spouses themselves can reach an agreement concerning property division. Married couples usually own a long list of tangible items; that is, items that you can hold and touch, such as: furniture, appliances, kitchenware, vehicles,

computers, clothing books, and many other items. The agreement should identify who is to receive these items. Ordinarily, such division can be achieved without the necessity of using a long list of items. There are four general approaches to recording who is to receive various items of personal property:

(1) Listing Property. By far the most tedious and time consuming method of specifying the distribution of tangible property in a separation agreement is simply to list all the tangible property the parties own and to designate which spouse is to receive each item. In writing such a list, the parties must be careful to describe the property sufficiently and not to take any shortcuts that would lead to ambiguity. For example, if the agreement said that the “bedroom suite” went to the Husband, the parties might later argue about whether a certain dresser is included in the term “bedroom suite.” If the agreement stated that the Wife were to receive all “antiques,” the parties might thereafter argue about whether a particular vase or chair was meant to be included in the term “antique.” If the agreement said that the Husband received all the vehicles, the parties might thereafter argue about whether the riding lawnmower or the boat were intended to be included in the term “vehicles.” As a variant, the parties may choose to list only items of significant value or importance, such as motor vehicles and items exceeding a certain dollar value.

(2) Listing by exception. One variant of the listing method described above is to list the tangible property that is going to one party, with the other party receiving everything else. This method can be particularly useful when one of the spouses is to receive just a few items and the other spouse is to receive everything else. Example:

“The Husband shall have and hold the following property as his sole and separate property free from any right, claim, or title of the Wife with the power to dispose of such property as if she was unmarried: the Gateway laptop computer and the 2015 Honda Civic automobile. All other items of tangible personal marital property not specifically listed above for the Husband shall be the sole and separate property of the wife, free of any claim, right or title of the Husband, with the power to dispose of such property as if she was unmarried. “

(3) Physical division of property. Often, the parties have already moved the location of their property such that the parties desire that all the property present in the Husband’s residence go to the Husband and all the property present in the Wife’s residence go to the wife. The separation agreement can make such a declaration. It can also be modified by exceptions. For example, the agreement might indicate that the Wife shall receive all property in her possession, except for the Husband’s Marine Corps officer sword, and the clothes washer and dryer, which will go to the Husband. The parties may wish to include instructions concerning the timing and transportation of items in the hands of one spouse that need to be turned over to the other spouse.

9. Real Estate.

a. Generally. In crafting a separation agreement, or in preparing for a contested divorce case, the parties must consider the disposition of any real estate. If the real estate is a residence, as is usually the case, the parties must consider who will have the right to live at the residence, who will pay maintenance costs, and who will pay the mortgage and related costs. If the house is to be sold, the parties still need to determine who will reside in the house

prior to the sale, who will pay various costs prior to the closing, and how the proceeds from the sale will be divided. The parties should also consider that sale of the house may not yield sufficient proceeds to pay off the mortgage, in which case the parties must determine who will pay the deficit.

b. Post Separation Real Estate Purchases. From time to time, one or both of the parties desires to purchase real estate after separation but prior to divorce. Such purchasers are concerned that the estranged spouse will somehow obtain part ownership or other rights in the property by virtue of the existing marriage. In general, marital property that the court can divide includes property “presently owned” and acquired after marriage but prior to separation. (NC GenStat 50-20). In other words, the general rule is that the real property purchased by one spouse after separation will belong solely to that purchasing spouse. However, it is possible that real estate, or any other property purchased after separation may be considered marital property if it is determined to have been purchased with marital funds. One method of ensuring that the other spouse is excluded from any rights in the real estate to be acquired is to execute and record an agreement to that effect. In such an agreement, authorized by NC GenStat 39-13.4 and NC GenStat 52-10, the spouses formally declare that each shall be able to convey property and transact business without the consent of the other. Such an agreement must be filed with the recorder of deeds in the county where the land to be purchased is located. People who are separated but not yet divorced and who desire to purchase real estate are cautioned and advised to consult legal counsel prior to such purchase.

10. Financial Accounts. The parties to a separation agreement should include disposition instructions concerning financial accounts and funds, such as: bank accounts, investment accounts, the Thrift Savings Account, Individual Retirement Accounts, military or civilian pension, and the Survivor Benefit Plan. Identify the accounts, what is to happen to the account itself, and who will receive the funds in the account (or how they are to be divided).

11. Military Pension Division.

a. Generally. Military members who serve honorably for twenty or more years are entitled to retire and to receive a pension beginning at that retirement; that is, such retirees receive monthly payments for the rest of their lives as a reward for such long and faithful service. In the 1981 case of McCarty v McCarty (453 U.S. 210) the U.S. Supreme Court determined that federal law gave military retired pay solely to the military retiree and that state court judges had no authority to award any portion to the retiree’s divorcing spouse. In reaction to this decision, Congress enacted the Uniformed Services Former Spouse Protection Act (USFSPA), which allowed state court judges to divide retired pay. The USFSPA provided that the Defense Finance and Accounting Service (DFAS), the military paymaster, would provide direct payments to the former spouse if certain requirements were met. More importantly, the USFSPA legislatively overturned McCarty and authorized state courts to divide Disposable Retired Pay (DRP). As defined by the original USFSPA, DRP includes all retired pay minus (i) amounts owed to the United States due to overpayment to the retiree, (ii) amounts deducted from pay due to a court-martial sentence, (iii) deducted as the monthly payment for the Survivor Benefit Plan, or (iv) deducted for certain Veteran’s Administration disability pay. The USFSPA (10 USC 1408) did not tell courts *how* to divide

DRP, it just gave them the authority to do so. The manner of pension division was largely left up to the states. The vast majority of states, including North Carolina, awarded the former spouse half of the pension that was earned during the marriage, based on final retired pay. For example, if the parties were married for 14 years, 12 of which overlapped military service, and the service member retired after 24 years, the former spouse would be awarded a portion of the final military retired pay calculated as follows:

$$\begin{array}{rcl} 1 & 12 \text{ (# of marital years overlapping military service)} & 12 \\ \hline - & X & = \\ 2 & 24 \text{ (total # years of military service)} & 48 \end{array} = \frac{12}{48} = 25\%$$

Thus, if the service member's final monthly retired pay was \$4,000, the former spouse would be awarded a \$1,000 share. The former spouse would also enjoy a 25% of any cost of living allowances awarded to the retiree. However, the National Defense Authorization Act (NDAA) for 2017 radically changed this state of affairs, severely limiting state authority over military pensions.

b. Impact of NDAA. The National Defense Authorization Act for 2017 (passed December 2016) continued to allow states to divide the military pension, but only that portion of the military pension earned at the time of the court order dividing the pension (usually the time of divorce). The intent was to deprive the former spouse of the benefit of service member increases in retired pay based on post-divorce increases in rank and longevity. The mechanism for accomplishing this goal was to statutorily redefine disposable retired pay (DRP) as retired pay that would have resulted if the service member retired at the time of divorce. Federal law only authorizes state judges to divide DRP, not all retired pay. In other words, courts must determine the retired pay that the member would have received had he retired *at the time of divorce*, and award the former spouse a portion thereof based on the overlap between the marriage and the years of service. This new rule applies to all divorces after December 23, 2016. If these rules sound confusing, that's because they are, and their application even more so. Additional information can be found at subparagraph d below and in a series of "Silent Partner" articles concerning "The Frozen Benefit Rule," at www.nclamp.gov

c. Misconceptions concerning the ten year marriage "requirement"

(1) Contrary to popular belief, the Federal law does not (and never did) impose a ten-year marriage requirement before a military pension can be divided. A court may award a former spouse a portion of retired pay even if the parties were not married for ten years. However, if the parties have been married for at least ten years, DFAS can help enforce the pension division through direct payments if the following requirements are met: (i) the parties were married for at least ten years, and (ii) the marriage overlapped military service by at least ten years, and (iii) a state court issued a qualifying pension division order or divorce decree, and (iv) that order is provided to DFAS, along with completed form 2293. When

these prerequisites are met, the military paymaster, DFAS, will take the required amount out of the retiree's pay and send it directly to the former spouse.

(2) State Requirements for Pension Division. As stated above, the USFSPA does not require a ten year marriage as a condition of military pension division. However, states (and U.S. territories) may impose on themselves additional requirements, and a small handful of them have. For example, as of this writing, Arkansas and Indiana only allow court ordered division of pensions that have vested; that is, the recipient has already served the requisite time necessary to earn it. If the divorce occurs prior to such time, the future pension is considered speculative and cannot be divided. Alabama requires that the parties' marriage overlap military service by at least ten years before a state court judge can divide the pension. Puerto Rico does not allow judges to divide pensions at all. In a contested case in North Carolina, a pension cannot be divided unless its value has been determined. Such valuation will include complicated testimony concerning the present day value of payments over the course of the recipient's lifetime.

(3) As discussed above, Federal law does not impose any 10 year marriage requirement in for a state to order pension division, despite widely prevailing misperceptions. Further, it is also a myth that federal law awards half of the military pension to the civilian spouse if such 10 year threshold is reached. If the parties cannot reach agreement as to pension division a court will typically award each side half of that portion of the military pension earned during the marriage, as explained above.

d. Jurisdiction to Divide the Military Pension. The USFSPA prescribes rules to determine which court has jurisdiction; or authority, to divide a military pension. This Federal law overrides any state law concerning jurisdiction. Thus, it is possible to have a case wherein the state court has authority to make other sorts of orders; e.g., concerning custody, alimony, child support, but does not have authority to order a military pension division. The USFSPA provides that state courts have jurisdiction to divide military pensions where: (1) the service member or retiree is domiciled in that state; (2) the service member or retiree resides in the state for reasons other than military orders; or (3) the service member or retiree consents to the jurisdiction of the court.

(1) “Domicile” means legal residence. It is the state in which the member is physically present (except for temporary absences) and which he intends to remain (or return if absent). Intent is determined by such actions as: paying state taxes, voting, registering a vehicle, obtaining a driver’s license, and purchasing a home.

(2) Consent to the court’s jurisdiction may occur expressly or inadvertently. Many separation agreements contain clauses wherein the parties expressly state that they consent to a particular court’s jurisdiction. One may also consent without even intending to. For example, some courts will hold that the service member consented to its jurisdiction for all issues simply by filing a responsive pleading to divorce petition.

(3) Residence other than because of military assignment. The state court may also exercise jurisdiction over the pension of a service member who resides in the state for other than military orders. For example, let us assume that Colonel T is assigned to duty in state A. However, he lives in state B, just a few miles away, so he can be closer to his step-son and

grandparents. He therefore lives in state B for reasons other than military orders. State B's divorce courts have jurisdiction to divide his military pension.

e. Equitable Distribution and Military Pension Division.

(1) What are the rules? Once you have determined that the court has the jurisdiction to divide the military pension, the next question is to determine the rules it will use for doing so. Under North Carolina law (NC Gen Stat 50-20) all property (with very few exceptions, e.g., inherited property) acquired after the marriage and before separation is marital property, and there is a strong legal presumption that an equal split of such property is the equitable and proper split. Therefore, courts are inclined to split the property equally or nearly so. However, in a contested case, the parties in an equitable distribution state (as opposed to a community property state) may attempt to persuade the judge that an unequal division is fair under the circumstances. The North Carolina statute lists factors for the court to consider in making this determination. Although Illicit Sexual Behavior (ISB) is relevant to the issue of alimony, as previously mentioned at paragraph 5b, ISB is NOT among the factors listed for the judge to consider in making a property award. The military pension is treated just like other property; the portion earned during the marriage is presumed to belong to both the married parties equally. HOWEVER, for divorces after December 23, 2016, an additional federal rule must be added into the equation; the requirement that the court calculate retired pay as if the service member retired at the date of divorce.

(2) What is to be divided? Once you determine what the rules are, you then need to determine what is to be divided. If the service member has already retired at the time of divorce, NDAA has no effect, and it is the *final* DRP that is divided. If the parties agree to a specific monthly dollar amount to be awarded to the former spouse (which has the effect of the former spouse waiving cost of living increases) as the former spouse portion of DRP, NDAA also has no effect. Finally, if the former spouse waives any share of retired pay, NDAA has no effect. However, if the member is still on active duty, and the parties neither agree to a fixed dollar award or waiver, some complicated rules apply. Let's take the following example:

GySgt George Washington and his wife Martha were married for 12 years prior to their separation from each other, 10 of which overlapped George's military service. At the time of the divorce in North Carolina, George has 13 years of service. Unless the parties agree otherwise, the fraction of George's pay that Martha will receive can be described as follows:

$$\frac{1}{2} \times \frac{10 \text{ (# yrs of marriage overlapping military service)}}{N \text{ (Total years of military service, as yet unknown)}}$$

Next, the court needs to determine what pay GySgt Washington would have received had he retired at the time of divorce. Assuming that GySgt Washington has not opted in to the Blended Retirement System (more about the BRS later), George's retired pay would be equal to:

2.5 (the multiplier) x years of service x High -3.

Definitions:

-The Multiplier. 2.5 is the “multiplier” when a service member has not opted in to the BRS. If the member opts in, the multiplier is 2.0. (Essentially, opting in to the BRS gives the service member an opportunity to invest a portion of the military paycheck into various investment funds, with a partial government match of up to 5% of the member’s base pay. The cost for this and certain other benefits under the BRS is that the multiplier for retired pay, should the member serve at least 20 years, falls from 2.5 to 2.0.)

-The High -3 is the average monthly pay of the member’s highest three earning years, generally the last three years. To determine the High 3, add up the base pay for the last 36 months, and divide by 36. For this example, let’s assume that such calculations yield in a High 3 of for SSgt Washington of \$4,000.

In this case, GySgt Washington’s retired pay, if he retired at the time of divorce is

32.5% (multiplier of 2.5 x 13 yrs service at time of divorce) x \$4,000 or \$1,300.

Martha’s presumptive share of this retired pay is a fraction described as $\frac{1}{2} \times 10/N$. There is some disagreement as to whether N must be the total number of years of service as was the case prior to NDAA, or the number of years of service at the time of divorce. The former favors the service member, the later the civilian former spouse. NDAA does not address this issue, which presumably would therefore be based on either state law or the discretion of the judge.

f. Marital Separation Agreements and Military Pension Division.

(1) In general, the parties to a separation agreement have broad authority to determine provisions for post separation support, alimony, division of property, and allocation of debt. The same holds true for military pension division, with some caveats. Typically, the parties want the divorce decree to incorporate the terms of the separation. However, the decree cannot violate federal law, including the USFSPA. Even if a judge inadvertently signs a decree awarding the former spouse a larger portion of DRP than authorized, DFAS will reject it when presented for direct pay.

(2) Waiver. A former spouse may waive any right to a portion of the military pension. Waiver may be an acceptable option if the former spouse’s presumptive share is slight, or if the waiver is the result of informed negotiation. For example, the former spouse may agree to waive a portion of the military pension in exchange for some other important benefit, such as the marital residence, or an up-front cash settlement. Civilian spouses, especially in cases involving lengthy marriages, should be cautious in considering waiver of pension division and should seek legal counsel before agreeing to do so.

(3) Military Pension Division Orders. Prior to NDAA, civilian and military family law attorneys routinely drafted separation agreements containing formulas for dividing the military pension of a member still on active duty. After a year of separation, the parties became eligible for divorce in North Carolina and practitioners then prepared a relatively

simple divorce petition, asking the court to incorporate the terms of the earlier separation agreement. This practice was possible because the date of divorce was irrelevant to pre NDAA divorces. Now (excluding cases of pension division waiver, specific dollar award, and clients who have already retired) the decree must include a pension division order setting forth data points not known at the time of the separation agreement: the high 3 at the time of divorce; grade and number of years of service as of the time of the divorce.

g. Pension Division and Disability.

(1) VA Disability Offset Veterans who have a service connected disability may be eligible to receive tax free disability pay. Prior to January 1, 2004, retirees who elected such disability pay forfeited an equal amount of disposable retired pay. Since such disability pay is not subject to pension division (it is excluded in the definition of DRP), such an election sometimes had the effect of reducing the pension dollars going to the civilian spouse. For example, support court X awards Martha a twenty percent share of George's DRP. At the time of the divorce, the DRP is \$4,000 and Martha gets \$800 per month. However, if George thereafter elects to receive disability pay of \$3,000, the DRP goes down to \$1,000 and Martha's 20% is now worth only \$200 per month. This result can be avoided by careful wording of separation agreements judicial decrees. Further complexity was added with the enactment of (a) Concurrent Retirement and Disability Pay (CRDP) [10 USC 1414] and Combat Related Special Compensation (CRSC) [10 USC 1413]. For additional information, see below and the "Silent Partner" article "Military Pension Division: The Evil Twins-CDDP and CRSC" at www.nclamp.gov

(2) Concurrent Retirement and Disability Pay (CRDP). Congress belatedly recognized the inequity of a system whereby an injured veteran loses a dollar of retirement pay for every VA disability dollar received. A veteran who meets the requirements for retirement and also meets the requirement for disability pay ought to receive both. In 2003, CRDP, effective January 1, 2004, was enacted, rectifying, at least to some extent, this inequity. In accordance with this law, a military retiree with a 50% VA disability rating or higher receives both retired pay and disability pay, with no offset. There was a ten year phase in for CRDP, ending December 31, 2013. The offset remains for those with a VA disability rating under 50%. As discussed above, a well drafted separation agreement can help the civilian spouse avoid a surprising reduction in pension payments due to the disability pay offset.

(3) Combat Related Special Compensation (CRSC). If the service member has a disability rating of at least 10%, and if the illness or injury is considered to be "combat related," as statutorily defined, then the member is entitled to CRSC. CRSC is not retired pay and therefore not divisible marital property. A service member cannot receive both CRDP and CRSC. If the service member meets the criteria for both, DFAS will determine which election yields the highest gross monthly dollars and automatically select that option, without taking into effect any court order for division of retired pay. The bottom line is that CRSC can also result in diminishment of retired pay and the value of the civilian former spouse's share thereof.

(4) **Howell v Howell, the U.S. Supreme Court Weighs In.** As identified above, the retiree's election to take disability pay can, in some circumstances, still have the effect of reducing military disposable retired pay, and the corresponding value of the former spouse's share thereof. Is the civilian spouse therefore entitled to some indemnity, some compensation for these lost pension dollars? The U.S. Supreme Court addressed this issue in the 2017 case of Howell v Howell 137 S.Ct. 1400, 197 L.Ed. 2d 781, 581 U.S.____ (May 15, 2017). The facts, in brief, are these: When Sandra and John Howell were divorced in Arizona in 1991, the court awarded Sandra 50% of John's military retired pay, which she began to receive the following year, when John retired from the Air Force. Thirteen years later, the VA determined that John had a service connected disability, that he was 20% disabled, and that he was entitled to about \$250 per month as a result. Not surprisingly, John elected to take the tax free VA disability dollars. This election diminished John's disposable retired pay and, consequently, the value of Sandra's 50% share thereof. Sandra petitioned the court to force John to repay her for all of the dollars lost due to his election to take VA disability pay. The trial court and the Arizona Supreme Court agreed with Sandra, but a unanimous U.S. Supreme Court reversed. The U.S. Supreme Court held that John was not required to pay back the dollars Sandra lost due to John's VA disability because VA disability dollars are, by statute, specifically excluded from the definition of "disposable retired pay." *However*, it is important to note that the vast majority of divorces, unlike that of the Howells, involve a written property settlement agreement. It is likely that, notwithstanding the Howell decision, the parties may, in a marital settlement agreement, provide for some indemnification in the event that the military retiree makes a VA election that diminishes disposable retired pay. In other words, courts will likely enforce a contract between the parties even though the court cannot order indemnification without such a contract. For additional information, see the Silent partner article, "Death of Indemnification" at www.nclamp.gov.

12. Impact of the Blended Retirement System on Divorce.

a. Generally. The NDAA for 2017, as discussed above, radically altered the rules for military pension division. The NDAA for 2016 made significant changes to the military retirement system itself. Prior to NDAA 2016, the armed forces had, essentially, a cliff system: you either made it to 20 years and earned a monthly annuity for life, or you fell short and earned no retired pay. NDAA 2016 created a Blended Retirement System (BRS) by which members who serve honorable for at least 20 years receive a lesser annuity than under the legacy system, but in exchange: (i) have the opportunity to invest in the Thrift Savings Program with a government match of up to 5%, (ii) earn a continuation bonus at 8-12 years' service of between 2.5 and 13 months base pay, and (iii) an opportunity to have a partial lump sum payment of upon eligibility for retirement. Service members with 12 or more years of service as of January 1, 2018 remain in this legacy system. Service member on active duty on January 1, 2018 with less than 12 years of service have a 1 year period to

decide whether to opt in to the blended retirement system (BRS), or to remain in the legacy system. New accessions after 1 January 2018 will automatically be enrolled in the BRS. Each of the elements of the BRS can have a significant impact on the property settlement. Additional information at: <http://militarypay.defense.gov/BlendedRetirement/>

b. The Defined Benefit. Under the legacy retirement system, service members who serve honorably for at least 20 years earn a monthly annuity equal to $2.5 \times \# \text{ years of service} \times \text{high 3}$ (average monthly base pay of highest three earning years). For example: Master Sergeant McGruff served honorable for 24 years. Assume his high three is \$5,000. He will receive a monthly amount equal to 60% (2.5×24) of \$5,000, or \$3,000. If MSgt McGruff was eligible to, and did, opt into the BRS, the multiplier used to calculate his annuity is 2.0 rather than 2.5. His retired annuity would be 48% (2.0×24) of \$5,000, or \$2,400. Thus, any percentage of retired pay awarded by a court to the civilian spouse, or agreed to in a separation agreement, is also diminished. The parties to the divorce and their respective attorneys may wish to address how election to participate in the BRS will affect distribution of assets.

c. Thrift Savings Plan Match. Those who opt in to the BRS, and all new accessions after January 1, 2018, will be enrolled in the government Thrift Savings Plan (TSP). Enrollees thereby choose from a number of investment funds. In addition to any gain in the value of the investment, the member enjoys the benefit of a Department of Defense contribution in an amount equal to 1% of the service member's base pay, regardless of how much or how little the member invests. Furthermore, the DoD will contribute additional amounts as described in the table below:

| SM Contribution | Department of Defense Contribution | DoD Match | Total |
|-----------------|------------------------------------|-----------|-------|
| 0% | 1% | 0% | 1% |
| 1% | 1% | 1% | 3% |
| 2% | 1% | 2% | 5% |
| 3% | 1% | 3% | 7% |
| 4% | 1% | 3.5% | 8.5% |
| 5% | 1% | 4.0% | 10% |

Systemically, the benefit of the TSP is to allow those members who serve for less than 20 years to earn some retirement savings, similar to a 401k plan. After only two years' service, members can keep both their own contributions and any government match. As pertaining to divorce, the TSP is a potentially large asset to be addressed in the separation agreement.

d. Continuation Pay. Members enrolled in the BRS will receive continuation pay somewhere around the 8-12 years of service mark of between 2.5 and 13 months base pay. It is not entirely clear whether, in a contested case, such pay would be considered marital property (a bonus earned during the marriage) or non-marital property of the member alone (granted in exchange for a promise of future service. Of course, the parties themselves can determine the distribution of continuation pay by mutual consent recorded in the separation agreement.

e. Lump Sum Buyout. Members enrolled in the BRS and who serve for at least 20 years are entitled to a lifetime annuity payment as described at paragraph 12b above. Additionally, the BRS allows members to elect a lump sum payment of either 25% or 50% of the anticipated retirement benefits up through age 67. The lump sum amount will be discounted by a percentage determined annually by the Department of Defense. Additionally, the monthly annuity will be drastically reduced, although fully restored at age 67. The lump sum option greatly diminishes the retiree annuity and therefore the dollar value of the share of the former spouse. The parties should therefore carefully consider how to address the possibility of lump sum payment. In particular, the civilian former spouse should consider indemnity clauses that protect his /her share against diminishment that would otherwise result when the retiree elects the lump sum payment.

13. Federal Benefits Provided to Former Spouses

a. Generally. In addition to authorizing state court divorce judges to divide military pensions, the Uniformed Services Former Spouse Protection Act (USFSPA) also provides certain former military spouses with government benefits: medical care, exchange, and commissary privileges.

b. Medical Benefits. Paragraph 6 above outlines former spouse eligibility for military medical care. The governing statute is Title 10 U.S. Code 1072

c. Commissary and Exchange Privileges. Commissary and Exchange privileges are extended to former spouses only under very limited circumstances, essentially the same circumstances under which full medical benefits are provided. To be eligible, the former spouse must be the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay. 10 USC 1062 and 10 USC 1072.

14. Survivor Benefits

a. Generally. Military retired pay stops at the death of the retiree. The Survivor Benefit Plan (SBP), established by federal law (10 USC 1431-1460) provides an option to ensure that the retiree's dependents continue to receive a stream of income after the retiree's death. SBP benefits are purchased through a monthly premium payment, deducted from military retired pay. Unlike a life insurance plan, the benefits are not paid in a lump sum; rather, a monthly sum is paid to the SBP beneficiary, an annuity extending through the life of the beneficiary (but which will terminate if the beneficiary remarries prior to age 55). The retiree may select the amount of pay the dependent should receive (the base amount) from a minimum of \$300 month full SBP coverage, which is 55% of the monthly retired pay. The cost is 6.5% of the base amount. At retirement, full SBP coverage for the spouse; i.e., the greatest benefit and the highest premium, take effect automatically unless the retiree makes some other election, which can only be taken without the spouse's written consent on the appropriate form. The service member can also elect to make a former spouse the beneficiary (or may be ordered to do so by a court). The former spouse should file a "deemed election" within one year of the court order to ensure that s/he is identified as the SBP beneficiary. Additional SBP information can be found at <http://www.dod.mil/militarypay/survivor/sbp/index.html>

b. Former Spouse Coverage. Federal law allows the retiree to elect a former spouse as the SBP beneficiary. If the retiree makes such an election, neither the current spouse nor children of the current spouse may be beneficiaries. Why would a retiree choose to make a former spouse the SBP beneficiary? First, such election may be the result of a negotiated marital separation agreement. A spouse who is likely to receive a significant percentage of the military retired pay may want some protection against early termination of that pay due to untimely death of the retiree. Secondly, the retiree may be electing former spouse SBP coverage because a court ordered the retiree to do so. If the former spouse remarries prior to age 55, the SBP coverage terminates.

15. Debts.

a. Generally. Just as the court is authorized to divide marital property; likewise, the court is authorized to allocate marital debt. Or, the parties may allocate debt through a separation agreement. Generally, a marital debt is one that occurred after the date of the marriage and prior to the date of separation for the joint benefit of the spouses. The fact that a particular loan only has the signature of one spouse does NOT preclude it from being a marital debt. Example 1: Wife uses her MasterCard to make numerous purchases of clothes, groceries, household appliances, and other items. The MasterCard bill, though solely in the name of the Wife, is marital debt. Example 2: The Husband purchases a motor vehicle on credit. Both spouses have access to and use the vehicle. The car loan is marital debt, notwithstanding the fact that only the husband's name is on the loan.

b. Effect of Court Order or Separation Agreement on Creditors. Neither a separation agreement nor even a court ordered distribution of debts can be used as a shield against creditors. Example 1: Husband and Wife both sign a loan for the purchase of a car. In their separation agreement, the parties agree that the Wife will make all the monthly payments to pay off the loan. She fails to do so and the creditor pursues Husband for payment. The separation agreement does not protect the Husband against the creditor. The separation

agreement merely gives the Husband a right to obtain reimbursement from the wife, a right he may have to sue her in court to enforce. Example 2: Same facts as above, except that this time, instead of a separation agreement, there is a court order directing Wife to pay off the car loan. Husband is still liable to the creditor. The Husband may sue the wife for reimbursement and may also attempt to have her held in contempt for failing to follow the court order.

c. Allocation of Debts in a Separation Agreement. The separation agreement should identify all of the debts and designate which of the parties will pay these debts (or whether the parties will share a debt equally or some unequal distribution of a particular debt). The debt should be described sufficiently so that there is no ambiguity, although the parties should avoid listing full credit card numbers on the separation agreement given the prevalence of identity theft. It is often desirable to structure the separation agreement such that the spouse that maintains possession of the asset is required to pay the related debt. You may be asking for trouble, and tempting fate, by structuring a settlement whereby one spouse pays the debt and the other spouse enjoys the benefit of the related asset. It is simply human nature to give a low priority to debts payable for assets the other party possesses. If the debts and assets can not be structured equitably without requiring one spouse to pay the debts of the other, the parties may wish to consider means by which the non-paying spouse can be kept abreast of the account; e.g., a requirement that the payor spouse provide proof of payment by a certain date.

16. Tax Matters. This section provides information concerning some basic tax rules that often come up in divorce cases. The section is not designed to be a comprehensive treatise on the complex issues of divorce taxation; it is merely offered to highlight some of the more common tax issues.

a. Filing Status. Until the date of divorce, the parties have the option of filing state and Federal tax returns jointly as Husband and Wife, even though they live separately. In many cases it is financially advantageous to file jointly; resulting in either a greater refund or less tax owed. On the other hand, filing jointly requires the parties to cooperate with each other. They must both sign the return. They must decide which spouse will prepare the return. If there are expenses involved in preparing the return; for example, paying an accountant or tax return preparation service, the spouses must determine who will pay for such services. Whichever spouse is preparing the return needs W-2s and other tax related documents of the other spouse. In some cases, administrative or logistical difficulties, or lingering animosity between the spouses may make filing jointly a less attractive option.

b. Dependent Exemption. If the parties file jointly, they may claim each child of the marriage as a tax exemption on their joint tax return. The effect of each exemption is to reduce the filer's taxable income by the exemption amount designated for that tax year. If the parties file separately- which they must do once a divorce decree is signed-only one party can claim a child of the marriage during any given year. In accordance with the general IRS rule, the custodial parent is entitled to the child dependency exemption. For purposes of this section, "custodial parent" is defined as that parent having physical custody for a greater portion of the year. However, the parties may, by written agreement, alter the usual rule and give the dependency exemption to the non-custodial parent. They may make such an agreement covering just one year, or multiple years, or all future years, or in accordance with

some formula: e.g., non-custodial parent gets exemption in even years, custodial parent in odd years. IRS form 8332 may be used by the custodial parent to release a claim for a child exemption to the non-custodial parent. See also IRS Publication 504 concerning divorced or separated persons.

c. Child Tax Credit. In addition to claiming an exemption for dependent children, taxpayers may also claim a credit for each qualifying child. The exemption described above at subparagraph b reduces taxable income. The child tax credit is even more valuable, resulting in a dollar for dollar reduction in tax liability in the amount of the credit. In order to take the credit, the taxpayer must be entitled to claim the child as a dependent for tax purposes. The child must also be under the age of 17 at the end of the tax year for which the return is being filed.

d. Tax treatment of Alimony and Child Support. Alimony is considered taxable income to the receiving spouse (26 USC 71) and a deduction from income for the payor spouse (26 USC 215). Child support, on the other hand, is a non-taxable event. It is not considered a deduction for the payor nor income to the recipient.

e. Property transfer between spouses. Property transfers between the spouses during the marriage are not taxable, nor are post marital property transfers that are “incident to divorce.” (26 USC 1041)

f. Sale of Residence. In some cases, the only way for the spouses to fairly divide their property is to sell their residence and to split the proceeds. In any event, divorce often results in the sale of real estate. Generally, a taxpayer may exclude from income all gains realized from such sale up to \$250,000 if certain tests are met. For at least two years of the five years preceding the sale, the taxpayer must have owned the home and lived in it as the primary residence. The exclusion can not be used twice within a two year time period. For joint filers, up to \$500,000 can be excluded if the aforementioned tests are met. Transfer of a house from one spouse to the other spouse as part of a divorce settlement is not considered either a gain or loss. Parties considering the sale or transfer of a home should review relevant IRS publications, including IRS publication 523.

17. Child Support.

a. Generally. The parents have a legal obligation to support all children of the marriage. Typically, one of the divorcing spouses will have physical custody of the children and a corresponding obligation to provide for the child’s daily care. The other spouse will have visitation rights and an obligation to provide financial support on a monthly basis in a specific dollar amount. Other aspects of child support include medical insurance / medical costs for the child, and educational expenses. A spouse has no legal obligation to provide support to children of the other spouse’s prior relationship (unless the child is adopted). Example: During Wife W’s first marriage, she gives birth to child C. That marriage ends in divorce. Thereafter, W marries H. H is not the biological father of C nor has he adopted C. H has no legal obligation of support to C. However, note that the relevant Marine Corps order as well as North Carolina law presume that the husband is the biological father of any child born during the marriage. Husbands who desire to avoid paying support for their wife’s out of wedlock children, born during the marriage, should seek legal counsel for assistance in

rebutting the aforementioned presumption of paternity. Frequently asked questions concerning child support are discussed at the following web site: <http://www.nclamp.gov>

b. Child Support Amount. As with any other term of a separation agreement, the parties themselves determine the appropriate amount of child support. When the separation agreement is incorporated into a divorce decree, the child support term, like all the other terms of the separation agreement, becomes the court's order. This is typically the means by which a child support amount is set- by agreement of the parties. However, the state can always act in the best interests of the child. Thus, if the parties agree to an unreasonably low amount of child support, the court can act to set a higher amount, notwithstanding the agreement of the parties. The amount of support awarded must be sufficient to meet the reasonable needs of the child for health, education, and maintenance having due regard for the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and home maker contributions of the parties, and other pertinent facts. NC Gen Stat 50-13-4.

(1) Child Support Guidelines. North Carolina, like every other state, has developed child support guidelines to help judges determine an appropriate level of support. The law creates a presumption that the amount derived from the guideline is the correct amount given all the facts and circumstances. The parties can also use these guidelines to help arrive at a negotiated child support amount in a separation agreement. North Carolina child support guidelines can be found at

<https://nddacts01.dhhs.state.nc.us/home.jsp?TargetScreen=WorkSheet.jsp>. The vast majority of cases will fall under worksheet A, wherein one party has primary custody and the other party has visitation. Clicking on that worksheet will allow you to calculate the presumptive child support order that a North Carolina judge would issue under your circumstances. This on line tool provided by the NC Department of Health and Human Services allows you to automatically calculate the guidelines child support amount (or at least estimate the amount), provided that you are able to feed the program certain information, such as the monthly gross (before tax) income of each of the parties, the child care costs each party pays in order for that spouse to go to work, health insurance costs each spouse pays on behalf of the supported child, and the monthly amount of any existing child support obligation. In determining the income of an active duty spouse, include the value of the basic allowance for housing (BAH) regardless of whether BAH is provided in cash or in the form of government housing. "Shared custody" occurs when each of the spouses has the child for at least 123 days during the year. In such cases, worksheet B is used. "Split custody" occurs when primary custody of two or more children is split between the parents; e.g., the mother retains custody of child one and the father has custody of child two. In such instances, use worksheet C. While the vast majority of cases will be decided based on child support guidelines, the parties are free to attempt to persuade the judge to order a variance; that is, a deviation from the guideline amount based on some extraordinary circumstances, such as unusual support needs of the child.

(2) Increase or decrease in child support. Either party can petition the court for a modification of child support based on a substantial change of circumstances relating to the needs of the child or the ability of the payor spouse to make payments. NC Gen Stat 50-13.7. The custodial parent's failure to comply with the visitation rights of the non-custodial

parent is NOT grounds for the payor spouse to discontinue making support payments. Rather, the payor spouse must enforce visitation rights through the court.

c. Duration of Child Support. In accordance with North Carolina law (NC Gen Stat 50-13.4(c), payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation. In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

18. Child Support Enforcement. The focus of this article is on negotiating a separation agreement and obtaining a divorce, not enforcing child support obligations. Nonetheless, since this issue comes up so frequently, some treatment of this item is warranted here, with particular attention to issues and remedies specific to military cases.

a. Enforcement through the Armed Forces. A service member's failure to provide adequate support to dependents brings dishonor to that service member and to the armed forces in general. Accordingly, each of the armed forces has a regulation detailing a service member's obligation to provide financial support. The Marine Corps regulation is explained in great detail at paragraph 4 above. The Regulation requires Marines to obey any court orders and separation agreements and, if there are none, to pay the specific amounts indicated in the Order. The Commanding Officer does not have the authority to take the service member's pay and give it to the spouse, or to unilaterally garnish any service member's wages. However, the Commander can take administrative action against the Marine, up to and including processing the Marine for discharge under other than honorable conditions. Marine Corps Order P5800.16F, the Marine Corps Separations and Retirement Manual (MARCORSEPMAN) for a pattern of misconduct. Perhaps more importantly, the Marine Corps Order concerning dependent support is specifically made a punitive order. That is, at the discretion of the Commanding Officer, a Marine can receive non-judicial punishment and can even be court-martialed for violating it. The Navy Dependent Support Order (Military Personnel Manual, section 1754-030) applies to all sailors, even when attached to a Marine Corps command. The military services' dependent support orders are not intended to be final resolution of contested child support issues. Parents desiring continuing, enforceable child support are well advised to obtain a court order for support either through private counsel or through the state's child support enforcement agency CSEA). The dependent support orders of the armed forces are listed below and can all be found on line:

Army

-Army Regulation 608-99

Navy

-Military Personnel Manual (MILPERSMAN) section 1754-30

Air Force

-Air Force Instruction 36-2906

Coast Guard

-Section 2.E Commandant Instruction M1600.2

b. Enforcing existing child support orders.

(1) Enforcement through contempt proceedings. If you already have a court order and your former spouse is not paying support as required, a civil court may hold him/her in contempt of court; that is, sentence him/her to jail, for such nonsupport. Such deadbeat parents often complain that they will be unable to work and therefore unable to pay support if incarcerated. However, most practitioners will tell you that just the opposite is true: there's nothing like a little jail time, or a judge's imminent threat of jail, to make child support money magically appear. The drawback, of course, is that such action requires additional court hearings and, quite likely, the assistance of civilian counsel and/or the child support enforcement agency.

(2) Enforcement through garnishment. A court garnishment order directs the employer of the obligor to send a portion of the employee's pay to a creditor. Upon receipt of a proper garnishment order the Defense Finance and Accounting Service (DFAS) will take the required child support out of the service member's paycheck and send it to the proper recipient. The divorce decree itself is insufficient to establish a garnishment. An additional court proceeding is needed to obtain a garnishment order. Your retained attorney, or the state CSEA can assist. Once the garnishment order is established, it can be served on DFAS.

(3) Enforcement through involuntary allotment. If a military obligor is at least two months in arrears on support, an involuntary allotment of pay can be established without additional court proceedings. To initiate the involuntary allotment, DFAS must receive notice from an authorized person, agent or court that the service member is at least two months behind in the support payments, along with a certified copy of the court order requiring the support. The state CSEA should be able to assist with this process.

(4) Enforcement against military retiree. If your former spouse is a military retiree, an additional support enforcement mechanism is available under the Uniformed Services Former Spouse Protection Act (USFSPA), Title 10 United States Code, section 1408(d). Obtain a certified copy of the court decree that has been certified by the clerk of the court and send it, along with DD Form 2293 (Application for Former Spouse Payments from Retired Pay) to the Defense Finance and Accounting Service. Ensure that these documents arrive at DFAS within ninety days of the date the court clerk's certification. If direct payment is desired through electronic funds transfer from the retiree's account into your account, also use DFAS form 1059, Direct Deposit Authorization.

19. Medical Coverage for Children.

a. Generally. In determining the needs of the child, the parties should consider medical and dental coverage. There are two essential questions: (a) Which parent is responsible for providing health care insurance for the child? (b) Who is going to pay for the child's health care expenses that are not covered by insurance (or if shared, in what proportion?)

b. Health Insurance. Service members can obtain health care insurance through the armed forces for their dependents. A child continues to be a dependent even after divorce. A minor child continues to be a dependent even after retirement of the service member parent. Thus, at least part of the solution in military divorce cases is often an agreement by the service member to provide military health care for the child as long as that child is eligible therefore and an agreement by the custodial spouse to have the child use the military facilities. Details concerning Tricare eligibility may be found through the Tricare web site: <https://www.tricare.mil/>. However, medical care through armed forces programs may not be an entirely satisfactory solution in those cases wherein the service member will be released or discharged (not retired) from active duty long before the child reaches the age of 18. In such cases, the parties must consider health care needs occurring after the child is no longer eligible for military medical care. Such health care insurance can be expensive.

c. Co-pays and Uncovered expenses. Health insurance will not pay for all the child's medical expenses. Most policies require a co-pay; that is, a certain percentage or dollar amount to be paid by the policyholder. For example, the insurance may pay \$80 of a \$100 medical bill. The patient/policyholder must pay the remaining \$20. Furthermore, health insurance policies do not cover all medical treatment. Certain preventative measures or tests may not be covered, and policies may exclude what they deem experimental or elective (as opposed to therapeutic) procedures. Finally, health and dental insurance policies may have a cap on the expenses that will be paid in any given year. Parties negotiating a marital separation agreement should consider all of these issues. Often, the answer is to share medical costs. The non-custodial parent may require evidence of the cost, such as a medical bill or insurance statement.

20. Life Insurance for the benefit of the children.

a. Generally. The non-custodial parent will almost invariably be ordered to pay child support on a monthly basis. However, if the non-custodial parent dies, the payment of such child support is no longer possible. Thus, for example, if the non-custodial military spouse is killed in war or dies in a traffic accident, the two-year-old child loses at least sixteen years of child support payments. The parties may therefore wish to consider a life insurance requirement to address the contingency of the untimely death of the payor spouse. This concern is particularly acute in the case of a very young child. Obviously, the cost of an insurance policy and the parties' ability to bear that cost are also factors. In negotiating a marital separation agreement, the parties should consider a number of questions: whether there will be any insurance requirement at all, the face value of any required policy, the beneficiary of the required policy, the termination date of any insurance requirement, the

source of the policy (military or commercial), and proof that such a policy has been obtained.

b. Military v Commercial Policy. See paragraph 7 above for a discussion of SGLI and commercial policies.

c. Beneficiary designation.

(1) Generally. No life insurance company is going to distribute life insurance proceeds directly to a minor child. Therefore, if the insured designates a minor as the beneficiary, at least two problems arise: first, a court may have to designate a guardian or trustee to receive the proceeds; secondly, the person that the court designates may not be the person the insured would have preferred. In some cases, these problems may be resolved simply by making the former spouse the beneficiary with the idea that the former spouse can be trusted to spend the proceeds wisely for the benefit of the child. If the former spouse can not be trusted to spend the funds for the child, then the parties should consider naming a trust the beneficiary, managed by a trustee identified by the insured.

(2) Testamentary Life Insurance Trust. At its most basic elements, a trust is a legal instrument by which one person (the trustor, or grantor) gives property to another person (the trustee) to manage for the benefit of a third person (the beneficiary). Such a device is commonly used when the beneficiary is a minor or has serious physical or mental disabilities. The trustee spends the trust funds for the benefit of the beneficiary in accordance with the instructions in the trust document. If the trust is created by language in a will, it is called a testamentary trust. Two documents must be prepared to put life insurance proceeds into a testamentary trust: (i) the will containing the trust language, and (ii) the beneficiary election of the life insurance policy. Consult your legal assistance attorney if you intend SGLI proceeds to be spent on a minor or if you desire a testamentary life insurance trust.

19. College Expense for the Children. Child support generally terminates under North Carolina law at the age of eighteen, although in some cases of delayed high school graduation, it may extend until age 20. [NC Gen Stat 50-13.4(c)]. Thus, a court will not order either of the parties to pay the child's college expenses as part of child support. However, if the parties make a binding agreement concerning the payment of the child's college expenses, the court can act to enforce the agreement. If the parties intend that their agreement cover the child's college expenses, there are several questions to consider: In what percentages will each of the parties pay for college expenses? Will there be some cap on the required amount? Do college expenses include room and board as well as tuition? What about books and supplies? Will the agreement limit the number of years that such expenses will be paid? Will there be some other limitation to ensure the reasonableness of the expenses; e.g., full time college student. Will there be some type of limitation on the type of educational institution that the child can choose from? Such agreements are generally more useful when the children close to college age. If a child is very young, agreements for the payment of college expenses are more risky to the parents; who may not be able to predict their relative incomes or financial status far into the future.

21. Child Custody and Visitation. In general, there are two categories of custody: legal custody and physical custody. Legal custody of a child means the authority to make decisions

for the child concerning matters of importance in the child's life, such as religious upbringing, education, and health care. Physical custody addresses which parent the child with. Ordinarily, one parent will have primary physical custody; i.e., the child will live with that parent, and the other parent will have visitation rights.

a. Legal Custody. As stated above, legal custody is the authority to make decisions in matters of importance in the child's life. Joint legal custody means that the parents will share in the decision making process. At the very least, the custodial parent must keep the non-custodial parent informed of important items in the child's upbringing and must consult with the other parent concerning impending decisions. Joint legal custody requires greater contact and cooperation between the parties.

b. Physical custody. Physical custody refers to the child's residence; that is, with which parent will the child live. In the most common situation, one parent has primary physical custody and the other specified visitation rights. In all but the most unusual cases (such as when a parent has a history of child abuse) the non-custodial parent will have visitation rights; that is, at certain designated times, the non-custodial parent will have the right to visit with the child. In some cases, the parties may have shared or joint physical custody. In such an arrangement, the parties agree that custody alternates among the parents such that each parent has the child roughly half the time. The parties should carefully consider whether such arrangement provides a safe, stable environment for the child, particularly if the parties currently or in the foreseeable future will be living a significant distance from each other.

c. What factors go into the custody decision? The law of North Carolina requires that the judge shall "award the custody of such child to such person, agency, organization, or institution as will best promote the interest and welfare of the child." NC GS 50-13.2 In other words, the decision is all about promoting the interests of the child. There is no presumption in favor of either the mother or the father and the judge can consider any relevant factor. (The desire of the child to live with one or the other parent is one relevant factor, and the trial judge has the discretion to determine the weight to be given to that factor.) Evidence of which parent was the primary caregiver during the marriage may be persuasive to the court. The parties' gripes and complaints about the misconduct of the other spouse are relevant to the custody decision only to the extent, if any, that such misconduct adversely impacts the child. Thus, for example, evidence that a parent is addicted to narcotics is highly relevant because of the addicted parent's diminished ability to care for a child and the likelihood of harm to the child. On the other hand, evidence of pre-separation sexual misconduct, or even promiscuity, is only marginally relevant to the custody issue, if at all. A military service member arguing for custody should be prepared to provide evidence to the court of the benefits to the child of the custodial parent's military service, such as: the enhanced safety and security of the military installation, access to good quality, affordable housing, close proximity to health care providers, the availability and quality of child care services, the quality of on Base schools, the availability of after school programs, and so on. The service member must also be prepared with answers to some very hard questions. Who is going to take care of the child while you are required to work unusual hours; such as when you are assigned to the rifle range or to duty as officer of the day? What is your contingency plan for child care in the event that you receive little or no notice orders to deploy? If you

can't consistently spend time with your child, isn't it in the child's interests for the other parent to have custody?

d. Visitation. The most common situation, particularly in military cases, is that the non-military parent will have custody and the military parent will have certain visitation rights. The visitation can be as narrow or as expansive as the parties agree or, if they cannot agree, as directed by the court. In negotiating a separation agreement, the parties should identify specific times for visitation. Failure to do so; for example, merely saying that the non-custodial parent shall have "liberal" visitation, or "reasonable" visitation, is an invitation to future disagreements, problems, and litigation because such terms are so vague. In a typical military case handled at the Camp Lejeune, the parties' separation agreement might grant visitation two weekends per month (either the first and third or second and fourth), four consecutive or nonconsecutive weeks during the summer, and a roughly even split of the various holidays throughout the year. The agreement would specifically identify the times the child is to be picked up and returned. In addition to the aforementioned visitation, the non-custodial parent is granted visitation at such additional times as the parties can agree upon. While this may be a typical visitation provision, it is by no means a required schedule of visitation. The parties are limited only by what is practical and what they can agree upon. The parties may wish to specify an alternative visitation schedule in the event that the parties no longer live within 100 miles of each other; such as would likely occur upon the military spouse receiving orders to his/ her next duty station. Occasionally, one parent will desire that the other parent not have any visitation rights at all. Ordinarily, the court determines that it is in the best interests of the child to have a continuing relationship with both parents; but there are exceptions, such as when a parent has a history of child abuse. The parties should also consider the costs of visitation. If the parties live close to each other, such costs are minimal, but increase greatly if one of the parties move to a distant location, particularly likely for the service member. Who will pay visitation costs? Will these costs be shared? If the visiting parent is to pay, as is often the case, will there be some compensation concerning other assets or debts?

e. Uniform Child Custody Jurisdiction and Enforcement Act. Without some clear set of rules for determining who has jurisdiction, courts of the various states might very well both claim jurisdiction and issue conflicting orders. Such a chaotic state of affairs might even act to encourage parents to move children across state lines and then sue for custody in whatever state they moved to, thereby working an obvious hardship on the other parent. To prevent such chaos, every state has enacted some form of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). North Carolina's version can be found at NC Gen Stat 50a, Article 2. Under the UCCJEA, the "home state" is the only state authorized to enter custody orders. [North Carolina law allows North Carolina courts to make temporary custody orders even if it is not the home state in the case of an emergency, such as an imminent threat of mistreatment or abuse. NC Gen Stat 50A-204.] The "home state" is that state wherein the child lived with a parent or person acting as parent for at least six months immediately preceding the filing of the action. NC Gen Stat 50A-102(7). Except in emergency situations as defined at NC Gen Stat 50A-204, the initial custody determination can only be made by the home state. If there is no home state, there are more complicated rules determining what state has jurisdiction. Once a state with proper jurisdiction makes a custody order, that state has continuing, exclusive jurisdiction over custody until a North

Carolina court determines that (a) both parents and the child no longer reside in North Carolina or (b) neither the child nor both parents no longer have any “substantial connection” to North Carolina and substantial relevant evidence on the question of custody is no longer in the state. NC Gen Stat 50A-202

f. Parental Kidnapping Prevention Act. The federal PKPA (28 USC 1738A) generally mirrors the provisions of the UCCJEA, establishing a home state that will have continuing exclusive jurisdiction to decide custody and visitation and requires courts to honor (“give full faith and credit”) orders of other courts that properly exercised jurisdiction.

22. Finding and hiring a lawyer. Some cases will require the hiring of private counsel for resolution. This section is designed to assist you in finding and obtaining such counsel.

a. What types of divorce cases require the hiring of private counsel? Obtaining a good family law attorney can always be of some value. However, the question often becomes whether the assistance the attorney can provide in your specific case is worth the price. The answer to that question, of course, is a personal choice you make. However, there are some cases where obtaining private counsel vice relying solely on military legal assistance counsel is more important. If you cannot reach a settlement agreement with your spouse, you will need to litigate your contested case in front of a judge. The Legal Assistance Office will not appear in court on your behalf; you will have to hire a private, civilian attorney. Likewise, if you have already been served with a complaint for divorce either in North Carolina or some other state, you are well advised to hire private counsel. Or you may just want the extra attention to your case that may be possible with the hiring of private counsel. Or you may need private counsel simply because the local legal assistance office may not be sufficiently staffed to assist you.

b. Bar Referral Services. The North Carolina Bar Association operates a lawyer referral service. This service can assist you to find a lawyer practicing the type of law you are looking for; e.g., family law, in your geographic area. Information on line at www.ncba.org. The referral service can also be reached at 1-800-662-7660 or 919-677-8574. Those looking for an attorney in some other state may find it useful to use the following web site of the American Bar Association. It provides links to all other the various state bar referral services: <http://www.abanet.org/legalservices/findlegalhelp/home.cfm>

c. North Carolina Family Law Specialists. Attorneys can apply to the North Carolina State Bar for certification as a specialist in certain fields of law. One of those fields is family law. The Bar keeps a listing of those who have been approved for such certification. Information concerning Board certification, as well as the list of attorneys so certified (by area of practice as well as by geographic area) on line at: <http://www.nclawspecialists.gov/>

d. American Academy of Matrimonial Lawyers. AAML is a national organization granting membership status only to those who have met the organization’s stringent standards. Information and lawyer locator on line at: <http://aaml.org/>

