

DIVORCE MYTHS AND MISTAKES

Fort Bragg Legal Assistance Office

For many married individuals the possibility of divorce is an unfortunate reality. When one (or both) spouses are a military service member, additional considerations arise. This article attempts to address some of the biggest misconceptions about “military” divorces.

Myth #1: The JAG office can handle my divorce.

Like marriages, divorces are controlled by state law. The military has no ability to grant divorces and although JAG Legal Assistance attorneys can provide general information, they cannot represent parties in divorce actions.

Myth #2: Spouses are entitled to half the military pension.

A military pension is a negotiable asset just like a house or a bank account. Federal law allows military pensions to be divided in divorce settlements and many states have guidelines for determining the “marital share” based on the length of the marriage, but nothing is automatic.

A lot of the confusion about pensions comes from the way the Defense Finance and Accounting Service (DFAS) sends out retirement checks. The so-called “10-10 rule” means DFAS will send a check directly to the former spouse for the amount of the pension division in the divorce decree if there was an overlap of 10 years of marriage and 10 years of service. Without 10-10 compliance, the former spouse must look to the retiree for his or her share of each monthly payment. The 10-10 rule deals with how payments are made, it has nothing to do with automatic eligibility for a portion of retired pay.

Myth #3: Disability payments are off limits.

This myth is partially true. The Uniformed Services Former Spouses’ Protection Act, found at 10 U.S.C. 1408, exempts VA disability payments from division upon divorce. It is not an asset which can be divided at divorce as marital or community property. However, disability payments are considered income for purposes of calculating child support and alimony amounts.

Myth #4: Lawyers are a waste of money

Divorce affects peoples’ personal and financial lives for years after the court issues a final decree. It is incredibly difficult to reopen a completed divorce case, so it’s important to get it right the first time. Military pension division is specialized work and should be handled by an attorney with the necessary knowledge to get the best settlement possible. This is especially true if the military member will also be entitled to disability payments from the Veteran’s Administration. As painful as it may seem now to pay an attorney, it could save thousands of dollars in the future.

If you have questions, please contact the XVIII Airborne Corps and Fort Bragg Legal Assistance Office at 910-396-0396 or 6113.