

Military Retired Pay Division Orders (MRPDOs) under the new guidelines of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017)

On December 23, 2016, President Obama approved NDAA 2017, and effectively amended the definition of “disposable retired pay” in 10 USC §1408(a)(4). The ramifications of NDAA 2017 are significant for spouses or former spouses of non-retired military members. A traditional coverture fraction can no longer be used in a MRPDO to award a portion of disposable retired pay to an alternate payee for any non-retired military member. This means that the alternate payee’s portion of the military retired pay is frozen as of the date of the filing of the decree.

If the intent of the parties is to award a traditional coverture amount to the former spouse, there are ways of making that award possible but it will require more than just the MRPDO. Some viable alternatives are the following:

1. **MRPDO + Spousal Support:** Essentially a MRPDO is drafted awarding the alternate payee with the frozen coverture assignment as required, and an additional award of indefinite spousal support is required to make up for the difference between the assigned traditional coverture share and the frozen coverture from the MRPDO.
2. **Present Value + Offset:** Calculate the present value of the former spouse’s share of the service member’s military pension as of the date of divorce (or other agreed upon date) and award other marital assets in that amount to the former spouse as an offset. This method is a division of marital property that is consistent with both state and federal law, and typically offers a final solution that does not need to be revisited down the road. However, this method has its weaknesses. For example, if the service member is not vested (i.e., has fewer than 20 years of service) the present value is discounted to take into account that the pension may never vest and, thus, the former spouse will receive other marital assets that represent less than 50% of the marital portion of the pension if the service member eventually becomes vested. On the flip side, if this service member never becomes vested he/she would have given up other marital assets in exchange for a pension that he/she will never receive.
3. **Direct Payments:** Calculate the former spouse’s share of the pension (using the traditional coverture method) and require the service member to make direct payments to the former spouse. Although this method combines the division of the marital portion of the pension with a distributive or spousal support award, you may want to treat the entire amount as spousal support for tax purposes.

For more information on this topic, and suggested Separation Agreement Language please visit the following link: <https://www.qdrodrafting.com/about/Separation-Agreement-Language.php>