

Defendants in military service- Does not apply if the Plaintiff is in the MILITARY

In an action of divorce or annulment, where the **defendant** is in military service, **the defendant is afforded special safeguards** in order that the military serviceperson is not prejudiced in his or her defense of the action, especially where service on the defendant is by publication. Protection of persons in military service extends as well to a wife as to a husband who is in military service.

Persons in the military service of the United States are specifically protected by the Soldiers' and Sailors' Civil Relief Act of 1940, which, by making provision for the temporary suspension of legal proceedings and transactions relating to them, is designed to ensure that their civil rights are not prejudiced during their terms of service.

Retirement Benefits and Qualified Domestic Relations Orders

Protection of Military Benefits

The federal Uniformed Services Former Spouses' Protection Act authorizes courts to award up to 50% of the disposable retired pay of a military spouse, provided that the parties were married for at least ten years. This 1982 statute nullified the Supreme Court decision providing that state divorce courts are without power to divide and distribute military non-disability retired pay. Pennsylvania has opted to treat military pensions as marital property.

The federal statute does not afford complete protection to the non-military spouse, because military retirement pay that has been waived in order to receive veterans' disability payments is exempt from distribution as marital property on the theory that disability payments are compensation for lost earnings and are therefore not property subject to equitable distribution. Military retirees may therefore unilaterally exclude a portion of their retirement benefits from the marital estate by the simple expedient of converting retired pay to disability payments. The provision in the Divorce Code permitting equitable distribution of a veteran's compensation where the veteran has waived a portion of his military retirement pay is preempted by federal law and is of no effect. However, an order distributing retirement benefits cannot be defeated by a subsequent conversion to disability payments, and the court can order payment of the shortfall from other funds.

The Survivor Benefit Plan permits a military retiree to provide an annuity to a former spouse. The election must be made in writing by either the retiree or the former spouse within one year of the divorce decree.

A military separation payment is not a substitute for a retirement benefit and is not marital property when received post-separation.