

In every case, include the recitations and necessary biographical data to show jurisdiction and marital time in service.

The Court finds that: the parties were married on **[Date Of Marriage]**, in **[Place Of Marriage]**; this Court has complete jurisdiction in the premises, both as to the subject matter and the parties, under both **[state statutory section governing divorce and division of property]** and 10 U.S.C. § 1408 *et seq.*; the Court has jurisdiction over **[Member]** by reason of his **[residence other than by reason of military assignment, domicile, or consent to the jurisdiction of the Court]**; all applicable portions of the Servicemembers Civil Relief Act of 2003 have been complied with by waiver or otherwise. The parties **[were or were not]** married for more than ten years during **[Member's]** creditable military service.

In every case, recite full name numbers of both parties to assist military pay center in enforcing order (format below is only an example).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the bonds of matrimony existing between Plaintiff, _____ (“_____”), and Defendant, _____ (“_____”), be, and the same are wholly dissolved, and an absolute Decree of Divorce is hereby granted to _____, and each of the parties is restored to the status of a single, unmarried person.

Use the following two paragraphs for post-retirement divorces.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that payments to SPOUSE shall be made as called for in this *Decree* beginning on the first day of the first month following entry of this *Decree*.

Amount of benefits payable – includes safeguard against post-divorce recharacterization by Member of retired pay as disability pay. Note that if a specific dollar sum award is made (instead of a percentage), the COLA provision is ineffective.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, SPOUSE shall receive [ALT1 the sum of \$_____ from] [ALT2 ____% of] MEMBER's military retirement per month as SPOUSE's sole and separate property, payable from MEMBER's disposable retired or retainer pay, and that SPOUSE shall further receive ____% of any cost of living increases in said retired or retainer pay, computed from the gross sum thereof. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" includes retired pay paid or to which MEMBER would be entitled for longevity of active duty and/or reserve component military service and all payments paid or payable under the provisions of Title 38 or Chapter 61 of Title 10 of the United States Code, before any statutory, regulatory, or elective deductions are applied (except for deductions because of an election to provide a survivor benefit annuity to SPOUSE). It also includes all amounts of retired pay MEMBER actually or constructively waives or forfeits in any manner and for any reason or purpose, including but not limited to any waiver made in order to qualify for Veterans Administration benefits, or reduction in pay or benefits because of other federal employment. It also includes any sum taken by MEMBER in addition to or in lieu of retirement benefits, including but not limited to REDUX lump sum payments, exit bonuses,

voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member. All sums payable to SPOUSE as a portion of military retirement shall be payable from MEMBER's disposable retired or retainer pay to the extent that it is so restricted by law. The Defense Finance and Accounting Service (or successor military pay center) is directed to pay the funds as set out in this order directly to SPOUSE.

For pre-retirement divorces, use one of the following three alternative paragraphs controlling when benefits are to begin, plus one of the two paragraphs immediately below them defining the amount of benefits. Of the three alternatives, the first is for states that allow or require a *Gillmore* election of payments to the spouse at the member's eligibility. The second is for states that require payments to begin at actual retirement. The third simply provides a blank for those cases in which a starting date is agreed or ordered.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that payments to SPOUSE shall be made as called for in this *Decree* beginning on the first day of the first month following MEMBER's first eligibility for longevity retirement [ADD THE FOLLOWING IF LOCAL LAW CALLS FOR IT] and SPOUSE's making of the irrevocable election to begin receiving benefits. If MEMBER should remain in military service after becoming eligible for retirement, so that SPOUSE receives a percentage of a hypothetical retirement that MEMBER would have been eligible to receive, and MEMBER actually retires thereafter, the spousal percentage payable to SPOUSE shall

be recalculated as a percentage of the benefits MEMBER actually receives so as to provide for direct payment to SPOUSE by the military pay center of the correct sum owed.¹

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that payments to SPOUSE shall be made as called for in this *Decree* beginning on the first day of the first month following MEMBER's retirement from active duty, or transfer to the inactive reserves, but in any event no later than the date on which MEMBER begins to receive military retired pay.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that payments to SPOUSE shall be made as called for in this *Decree* beginning on _____ .

Amount of benefits payable – includes safeguard against post-divorce recharacterization by Member of retired pay as disability pay. Note that if a specific dollar sum award is made (instead of a percentage), the COLA provision is ineffective. The first paragraph calls for payments of a specific amount or percentage; the second paragraph contains a formula for determining the sum payable when the Member actually retires.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE shall receive [ALT1 the sum of \$_____ from] [ALT2 ____% of] MEMBER's military retirement per month as SPOUSE's sole and separate property, and that SPOUSE shall further receive ____% of any cost of _____

¹ For example [using strictly illustrative numbers], if MEMBER was eligible to receive \$1,000 in monthly retired pay when he was first eligible to retire, but he continued in service and SPOUSE received a spousal percentage of 40%, she would receive \$400 per month. If MEMBER continued in service for some time, during which cost of living adjustments increased the sum payable to SPOUSE to \$440, and then MEMBER retired, and received \$1,500 in actual monthly retired pay, then SPOUSE's portion would be recalculated by dividing the sum SPOUSE was receiving by the sum MEMBER received upon retirement (in this example, $440 \div 1,500$), yielding 29.3333%. SPOUSE would then receive future cost of living adjustments to the recalculated percentage to which she was entitled of MEMBER's actual retired pay.

living increases in said retired or retainer pay, computed from the gross sum thereof. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" includes retired pay paid or to which MEMBER would be entitled for longevity of active duty and/or reserve component military service and all payments paid or payable under the provisions of Title 38 or Chapter 61 of Title 10 of the United States Code, before any statutory, regulatory, or elective deductions are applied (except for deductions because of an election to provide a survivor benefit annuity to SPOUSE). It also includes all amounts of retired pay MEMBER actually or constructively waives or forfeits in any manner and for any reason or purpose, including but not limited to any waiver made in order to qualify for Veterans Administration benefits, or reduction in pay or benefits because of other federal employment, and any waiver arising from MEMBER electing not to retire despite being qualified to retire. It also includes any sum taken by MEMBER in addition to or in lieu of retirement benefits, including but not limited to REDUX lump sum payments, exit bonuses, voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member, except that the percentage of such benefits payable to SPOUSE may have to be recalculated to take into account that less than 240 months of total service have accrued. All sums payable to SPOUSE as a portion of military retirement shall be payable from MEMBER's disposable retired or retainer pay to the extent that it is so restricted by law. The Defense Finance and Accounting Service (or successor military pay center) is directed to pay the funds as set out in this order directly to SPOUSE.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE shall receive a percentage of MEMBER's military retirement per month as SPOUSE's sole and separate property, payable from MEMBER's disposable retired or retainer pay, to be calculated as follows: the sum of retirement benefits payable each month divided by two, and multiplied by a fraction, the numerator of which is _____ [USUALLY, THE NUMBER OF MONTHS OF MARRIAGE DURING SERVICE] and the denominator of which is the total number of months of military service creditable for retirement. SPOUSE shall further receive a identical percentage of any cost of living increases in said retired or retainer pay, computed from the gross sum thereof. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" includes retired pay paid or to which MEMBER would be entitled for longevity of active duty and/or reserve component military service and all payments paid or payable under the provisions of Title 38 or Chapter 61 of Title 10 of the United States Code, before any statutory, regulatory, or elective deductions are applied (except for deductions because of an election to provide a survivor benefit annuity to SPOUSE). It also includes all amounts of retired pay MEMBER actually or constructively waives or forfeits in any manner and for any reason or purpose, including but not limited to any waiver made in order to qualify for Veterans Administration benefits, or reduction in pay or benefits because of other federal employment. It also includes any sum taken by MEMBER in addition to or in lieu of retirement benefits, including but not limited to REDUX lump sum payments, exit bonuses, voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member. All sums payable to SPOUSE as a portion of military retirement shall be payable from MEMBER's disposable retired or retainer pay to the

extent that it is so restricted by law. The Defense Finance and Accounting Service (or successor military pay center) is directed to pay the funds as set out in this order directly to SPOUSE.

Alternative Paragraphs for alimony in lieu of MRBs (next two paragraphs). Note that the language used in these paragraphs varies depending upon whether or not the Member has already attained eligibility for retirement.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE has a putative interest in the military retirement benefits accruing to MEMBER as a result of his service in the United States Armed Forces, as her sole and separate property, equal to _____% (one half of ___ months of military service performed during marriage divided by ___ months of MEMBER's military service) of the sum payable to MEMBER upon eligibility for retirement, plus a like percentage of all cost of living adjustment increases that accrue to said military retirement benefits thereafter, computed from the gross sum thereof. For the purpose of interpreting this Court's intention in making the division set out in this Order, "military retirement" includes retired pay paid or to which MEMBER would be entitled for longevity of active duty and/or reserve component military service and all payments paid or payable under the provisions of Title 38 or Chapter 61 of Title 10 of the United States Code, before any statutory, regulatory, or elective deductions are applied (except for deductions because of an election to provide a survivor benefit annuity to SPOUSE). It also includes all amounts of retired pay MEMBER actually or constructively waives or forfeits in any manner and for any reason or purpose, including but not limited to any waiver made in order to qualify for Veterans Administration benefits, or reduction in pay or benefits because of other federal employment, and any waiver arising from MEMBER electing not to retire despite being

qualified to retire. It also includes any sum taken by MEMBER in addition to or in lieu of retirement benefits, including but not limited to REDUX lump sum payments, exit bonuses, voluntary separation incentive pay, special separation benefit, or any other form of compensation attributable to separation from military service instead of or in addition to payment of the military retirement benefits normally payable to a retired member, except that the percentage of such benefits payable to SPOUSE will have to be [ALT would have had to have been] recalculated to take into account that less than 240 months of total service have accrued.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to the stipulation of the parties, SPOUSE shall have no interest whatsoever in said military retirement benefits as community property or her separate property, having waived said rights on condition and in exchange for a stipulated Order of this Court for an award of unmodifiable alimony for her support, beginning the first day of the first month following MEMBER's retirement or attainment of eligibility for retirement (or any other form of compensation attributable to separation from military service), [ALT beginning the first day of the first month following entry of this decree, or insert agreed date] in an amount equal to _____% of the military retirement benefits to which MEMBER is or would be eligible upon retirement or eligibility therefor, [ALT2 in the sum of \$_____ per month,] plus _____% of all cost of living adjustment increases that accrue to said military retirement benefits thereafter (or which would accrue if such benefits were elected upon eligibility), which support obligation shall not be dischargeable in bankruptcy or otherwise. If MEMBER departs service prior to the accrual of 240 months of creditable service, the percentage payable to SPOUSE shall be recalculated to take into account that less than 240 months of total

creditable service accrued. The Defense Finance and Accounting Service (or successor military pay center) is directed to pay the funds as set out in this order directly to SPOUSE.

The following paragraph states that Cost of Living Adjustments are specifically contemplated, and accrue to both the Member's and the Spouse's portions of the benefits.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the amount called for herein shall not be modifiable by the direct or indirect action of either party, either by way of increase or decrease, except as expressly set forth herein. It is contemplated that future cost of living adjustments will be granted by the United States government, by means of which the gross military retirement benefits specified above will increase, thus raising the amount being paid to SPOUSE.

The following paragraph states the intention to provide a life-long benefit as a property settlement, which could be critical if the federal law is changed to otherwise allow for termination upon remarriage.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the payments called for herein from MEMBER's retired or retainer pay shall continue during the joint lives of the parties, and irrespective of the future marital status of either of them; they shall terminate only upon the death of either SPOUSE or MEMBER.

This provision provides for simultaneous payments to Member and Spouse, and states intention to comply with federal law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the appropriate military pay center shall pay the sums called for above directly to SPOUSE, to the extent permitted by law, at the same times as MEMBER receives retired or retainer pay, and that this Decree is intended to qualify under the Uniformed Services Former Spouses Protection Act, 10 U.S.C. § 1408 *et seq.*, with all provisions to be interpreted to make the Decree qualify.

The following paragraph is not strictly necessary, but tends to make the Member feel better and clarifies intentions.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that with the exception of the amounts specifically awarded to SPOUSE, the balance of MEMBER's retired or retainer pay is awarded to MEMBER as his sole and separate property.

First fallback provision; payments by allotment if direct payment not made or insufficient.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if the amount paid by the military pay center to SPOUSE is less than the amount specified above, MEMBER shall initiate an allotment to SPOUSE in the amount of any such difference, to be paid from any federal entitlements due MEMBER, with said allotment to be initiated by MEMBER immediately upon notice of such difference, and making up any arrearages in installments not less in amount or longer in term than the arrearages accrued.

Second fallback provision; direct payment by Member for any month in which the order not yet in effect, or in which the pay center fails to provide the contemplated payment and allotment is not possible.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if in any month direct payment is not made to SPOUSE by the military pay center, and no federal entitlement exists against which such an allotment may be initiated, or for whatever reason full payment by allotment is not made in that month, or if the amount paid through the allotment is insufficient to pay the difference specified above, MEMBER shall pay the amounts called for above herein directly to SPOUSE by the fifth day of each month in which the military pay center and/or allotment fails to do so, beginning [ALT1 in _____] [ALT2 upon MEMBER's eligibility for retirement].

Third fallback provision; if military retirement merged with another retirement program, that other retirement program should honor this order to the extent possible.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if MEMBER takes any steps to merge the military retirement with another retirement program of any kind, that retirement system, program, or plan is directed to honor this court order to the extent of SPOUSE's interest as set out above, to the extent that the military retirement is used as a basis of payments or benefits under such other retirement system, program, or plan.

Fourth fallback provision; if Member's actions cause decrease of payments to Spouse, he must make up the difference; explicit constructive trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if MEMBER takes any action that prevents, decreases, or limits the collection by SPOUSE of the sums to be paid hereunder (by application for or award of disability compensation, combination of benefits with any other retired pay, waiver for any reason, including as a result of other federal service, or in any other way), MEMBER shall make payments to SPOUSE directly in an amount sufficient to neutralize, as to SPOUSE, the effects of the action taken by MEMBER. Any sums paid to MEMBER that this court order provides are to be paid to SPOUSE shall be held by MEMBER in constructive trust until actual payment to SPOUSE.

Fifth fallback provision; reservation of jurisdiction by court to enter further, construing, or enforcing orders as required. For cases in which alimony in lieu of retirement benefits was awarded, substitute “sums” for “military retirement benefits” in the first sentence, and phrase the reservation of jurisdiction as one to make a further award of alimony in the event that the Member does not comply with the terms as set out.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court shall retain jurisdiction to enter such further orders as are necessary to enforce the award to SPOUSE of the military retirement benefits awarded herein, including the recharacterization thereof as a division of Civil Service or other retirement benefits, or to make an award of alimony (in the sum of benefits payable plus future cost of living adjustments) in the event that MEMBER fails to comply with the provisions contained above requiring said payments to SPOUSE by any means, including the application for a disability award or filing of bankruptcy, or if military or government regulations or other restrictions interfere with payments to SPOUSE as set forth herein, or if MEMBER fails to comply with the provisions contained above requiring said payments to SPOUSE.

Explicit reservation of jurisdiction for Court to “translate” order to percentage of actual retirement, in case a hypothetical order was made, or an *Gillmore* election was made, or for any other reason the sums paid are not correctly set out as a percentage of the retirement benefits ultimately paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court shall retain jurisdiction to enter such further orders as are necessary to carry its intended division into practice by entering a later order construing the sum payable as a percentage of the sums ultimately paid. For example, if SPOUSE made an irrevocable election under *Gillmore* before MEMBER’s actual retirement, or the original division of benefits was in the form of a hypothetical award, or if any other projection or supposition was made in dividing the military retired pay that proved, ultimately, to be inaccurate or not directly enforceable, the Court retains jurisdiction to carry its original intent into practice in the interest of equity and for the avoidance of unjust enrichment.

The following paragraph is a safeguard paragraph intended to allow relatively painless discovery from the military pay center in the event further information is necessary to come up with an enforceable order. It is probably only necessary in cases in which the Member is still in service on the date of divorce, so that some information is not known at that time.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that MEMBER has waived any privacy or other rights as may be required for SPOUSE to obtain information relating to MEMBER’s date of retirement, last unit assignment, final rank, grade, and pay, present or past

retired pay, or other such information as may be required to enforce the award made herein, or required to revise this order so as to make it enforceable, per 65 Fed. Reg. 43298 (July 13, 2000).²

The following paragraph elects the Spouse as the irrevocable beneficiary of the Survivor's Benefit Plan at the full base amount.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE is and shall be deemed as the irrevocable beneficiary of the survivor's benefit plan ("SBP") through MEMBER's military retirement as the former spouse of MEMBER, and MEMBER shall execute such paperwork as is required to make or extend the election of SPOUSE as said beneficiary, and shall do nothing to reduce or eliminate that benefit to SPOUSE. MEMBER shall elect the former spouse-only option and shall select as the base amount the full amount of monthly retired pay.

The following paragraph elects the Spouse as the irrevocable beneficiary of the Survivor's Benefit Plan benefits at a base amount sufficient to cover the spousal interest, but no more.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SPOUSE is and shall be deemed as the irrevocable beneficiary of the survivor's benefit plan ("SBP") through MEMBER's military retirement as the former spouse of MEMBER, and MEMBER shall execute such paperwork as is required to make or extend the election of SPOUSE as said beneficiary, and shall do nothing

² Providing that in addition to any disclosures permitted under 5 U.S.C. § 552a(b) of the Privacy Act, a former spouse who receives payments under 10 U.S.C. § 1408 (i.e., the USFSPA) is entitled to information, as a "routine use" pursuant to 5 U.S.C. § 552a(b)(3), on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.

to reduce or eliminate that benefit to SPOUSE. MEMBER shall elect the former spouse-only option and shall select as the base amount the higher of: (1) the minimum permissible SBP amount; or (2) a sum of monthly retired pay which, when multiplied by 55%, will yield the same dollar sum as is paid to SPOUSE during the parties' lifetimes under the terms of this order.

The following paragraph serves two purposes: The first sentence allows private insurance to create a substitute for a pre-retirement survivor annuity (lacking in the military system); the second is to allow waiver of the SBP by the Spouse and its replacement by a private insurance policy where financially reasonable; the Member is required to cooperate. Note that, as written, the paragraph does not indicate who is to pay for such replacement coverage; presumably, counsel will have this term mirror the responsibility for the SBP premiums; if no arrangement is made, it will fall to the spouse to get it, or not.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that until such time as MEMBER actually retires, and the SBP as specified is in place, SPOUSE shall be permitted to obtain other insurance coverage on MEMBER's life, in such sums as SPOUSE deems appropriate to secure SPOUSE's insurable interest. SPOUSE shall have the right to waive the right to be SBP beneficiary as specified above, and shall be permitted to obtain other insurance coverage on MEMBER's life, in such sums as SPOUSE deems appropriate to secure SPOUSE's insurable interest. In the event SPOUSE makes the election to obtain such insurance, MEMBER shall sign such documents or perform such other acts as are necessary to allow SPOUSE to secure such insurance coverage on MEMBER's life, including complying with a request for a physical examination, if necessary.

Use the following paragraph if: (1) the Member has already retired; (2) the SBP was NOT elected at the time of retirement; (3) it is desired to have the SBP in effect for the Spouse in the future, if possible. Note that, as written, the following paragraph does not allocate the SBP premium cost.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the next open enrollment period, if any, MEMBER shall elect the Survivor's Benefit Plan survivor benefit annuity associated with the military retirement and shall designate SPOUSE as the named beneficiary thereof.

Use the following paragraph to equally divide the marital portion of all UNISERV/Thrift Saving Plan accounts. Note that, instead of a rollover to Spouse's account, the Order could direct a payment to Spouse or to a third party (such as to one or more of the attorneys). Note that the tax effects of different kinds of distributions are different.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Decree shall be considered a Retirement Benefits Court Order. The Federal Retirement Thrift Investment Board (or responsible successor agency) shall roll over ____ % of all sums in MEMBER's UNISERV/TSP accounts as of **[Date of Division of Account]**, plus a like percentage of any interest or earnings, gains or losses, on that defined share through the actual date of distribution, to an eligible IRA or other account in SPOUSE's name as directed by SPOUSE. Upon payment thereof, SPOUSE shall have no further right, title, or interest in or to MEMBER's UNISERV/TSP account.