



# Practical Family Law Military Applications



JUDGE DAVID D. FARR  
PRESIDING JUDGE  
312<sup>TH</sup> JUDICIAL DIST. COURT (FAMILY)  
HARRIS COUNTY, TEXAS

**COL DAVID D. FARR**  
**STAFF JUDGE ADVOCATE**  
**36<sup>TH</sup> INFANTRY DIVISION**  
**Texas Army National Guard**

Board Certified – Family Law (TX) 2004  
ADMINISTRATIVE JUDGE  
HARRIS COUNTY FAMILY COURTS

201 Caroline, 16<sup>th</sup> Floor  
Houston, Texas 77002  
[judgetdavidfarr@gmail.com](mailto:judgetdavidfarr@gmail.com)  
(713) 854-4740



# Practical Family Law Military Applications



JUDGE JAMES COOPER  
ASSOCIATE JUDGE  
245<sup>TH</sup> JUDICIAL DIST. COURT  
HARRIS COUNTY, TEXAS

**LTC JAMES COOPER**  
**DEPUTY STAFF JUDGE ADVOCATE**  
**Texas State Guard**

201 Caroline, 15<sup>th</sup> Floor  
Houston, Texas 77002  
James\_cooper@justex.net  
(713) 368-5900



# Practical Family Law Military Applications



JUDGE DENNIS SLATE  
Attorney at Law  
Municipal Court Judge (Pasadena)

**MAJ DENNIS SLATE**  
**Judge Advocate General's Corps**  
**USAR**

Board Certified – Family Law (TX) 2015

112 E. Forrest  
Deer Park, Texas 77536  
dennis@slatelaw.com  
(281) 476-9447



# Practical Family Law Military Applications



## Agenda Items



Military Retirement Division



Military Child Support Calculations



Possession and Access Issues



# Uniformed Services Former Spouses Protection Act (USFSPA)



## WHAT IS IT?

- Passed by Congress in 1982
- Prior to enactment, states treated military pensions differently
- Some states said they were divisible marital property
- Others said they were expectancies rather than vested benefits



# Uniformed Services Former Spouses Protection Act (USFSPA)



What does USFSPA do?

- Military pension division is neither mandated nor automatic. It is up to the states to decide whether military retirement is marital or community property that is divisible upon divorce or whether it is solely the property of the SM
- It limited pension division jurisdiction to a state where the SM was domiciled, had consented to jurisdiction, or resided *not due to military assignment*. [These are the “federal jurisdiction” rules]



# Uniformed Services Former Spouses Protection Act (USFSPA)



- Although a state court can subject military retirement rights to division in equitable distribution proceedings, it cannot force a SM to retire. [But it can order him/her to start paying a share of the pension to the spouse before retirement!]
- State courts can order the direct pay of pension division awards (where there is ten years' overlap between the marriage and creditable military service) through DFAS.



# Uniformed Services Former Spouses Protection Act (USFSPA)



- Such direct payments may not exceed 50% of the SM's disposable retired pay (in most cases).
  
- And, finally, these direct payments cease upon the death of the SM or the spouse (or former spouse).





# Uniformed Services Former Spouses Protection Act (USFSPA)



What didn't USFSPA do?

- It DID NOT tell the courts how to divide military pensions.
- Nowhere in the Act is there a clear picture of how to divide a military pension upon divorce



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Federal Jurisdiction

- A state may ONLY exercise jurisdiction over a SM's pension right if
  - That state is the SM's domicile
  - The SM consents to the exercise of jurisdiction
  - The SM resides there (for reasons other than military assignment)
- These provision override traditional long-arm statutes



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Domicile

- Not the “home of record,” which is a purely administrative military term
- May not be where he is living or currently stationed; SCRA allows SM’s to claim original domiciles for voting and tax purposes
- Domicile has 2 elements
  - Physical presence of the SM(except for temp absences); and
  - Intent to remain



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Intent to Remain

- Look at SM LES for which state is claimed for “State Taxes.”
- Ask SM or spouse where filed state taxes last year?
- Ask Where did SM vote last election?
- Where does SM own real property?
- Look at DD Form 2058 “State of Legal Residence Certificate”



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Consent to Jurisdiction

- Knowingly consent by allowing litigation for division
- Impliedly consent by not protesting jurisdiction or by filing response to request for division
  - Each state has own rules for what constitutes general appearance
  - What if SM wants to dispute custody but not consent to retirement division?



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Residence not due to Military Assignment

- How can SM reside somewhere other than because of his orders?
  - EX: SM orders station him at Fort Bliss and he has a barracks space, but chooses to live in New Mexico and drive in to work.
  - New Mexico would have jurisdiction over pension, not Texas



# Uniformed Services Former Spouses Protection Act (USFSPA)



Direct Pay from DFAS – must have the following

- The retired pay is divided by a final decree of divorce, dissolution, legal separation, or court approval of a property settlement agreement [Note: This means that an unincorporated separation agreement, a judgment in a partition case or an order of specific performance *won't get direct payment from DFAS*];
- There is a statement in the order that the SM's rights under the Servicemembers Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act) were observed;



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Direct Pay Continued

- The amount directly payable to the former spouse as pension division is not more than 50% of the retiree's disposable retired pay;
- The "10 year test" has to be met (there must be at least 10 years of marriage which overlap 10 years of service creditable toward retirement);
- The court order must provide for payment from military retired pay, and the amount must be in an acceptable format (using one of the four methods of pension division allowed by DFAS); and
- The order must show that the court has jurisdiction over the SM in accordance with USFSPA provisions.





# Uniformed Services Former Spouses Protection Act (USFSPA)



## DFAS Language

- In order to get DFAS to accept a Court division order it must use one of the following methods to express the division:

Fixed dollar amount. A fixed dollar clause could read: ***Wife is awarded \$550 per month, payable from Husband's disposable retired pay.***

Percentage clause. A percentage clause might state: ***Wife is granted 50% of Husband's disposable retired pay.***



# Uniformed Services Former Spouses Protection Act (USFSPA)



## DFAS language Continued

Formula clause. This is an award expressed as a fraction or a ratio, and it typically used when a SM is on active duty (or a Reservist is still drilling). It might read: ***Wife shall receive 50% of the Husband's disposable retired pay times a fraction, the numerator being the months of marital pension service, and the denominator being the total months of service by Husband.*** The court must then provide the numerator, which is usually the months of marriage during which time the member performed creditable military service.



# Uniformed Services Former Spouses Protection Act (USFSPA)



DFAS language continued

Hypothetical clause. This is an award based on a rank or status which is different from that which exists when the servicemember retires. For example, the order might say: ***Wife is granted 40% of what a major would earn if he were to retire with 18 years of military service.*** This is often used when state law requires that the share of the pension awarded to the spouse be determined according to the grade and years of service of the member at a specific date, such as the date of divorce or of separation



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Methods to Divide Military Pensions

- Deferred Division – Having former spouse wait to collect until the SM collects; “*if, as, and when*” payments.
- Possible formulas (assume \$5000/month pension)
  - $\$5000 \times \frac{20 \text{ yrs marital pension service}}{20 \text{ yrs total pension service}} = \$5000$  marital prop
  - $\$5000 \times \frac{10 \text{ yrs marital pension service}}{20 \text{ yrs total pension service}} = \$2500$  marital prop



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Formulas Continued

- If not retired???
- $$\frac{\text{Years of marital pension}}{\text{Years of total pension service}} \times \underline{10}$$
- DFAS will calculate it later if former spouse is eligible



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Reserve and National Guard Pensions

Example: Major Bill Smith has five years of Army active duty and 15 years of National Guard service. He married when he left active duty.

### Marital fraction using points vs years

To calculate the marital fraction using points, calculate the points he acquired during active duty by multiplying **5 times 365 to get 1825** points. Then count his Reserve points. **Assume that he acquired 60 points a year (for weekend drill, "summer camp" and membership) for 15 years, or 900 points.** Thus his total points at **20 years are 2725 [1825 + 900], of which 900 (or about 33%)** are marital. This should mean that 33% of his retirement pay (assuming retirement and date of separation both occur at year 20) is marital.



# Uniformed Services Former Spouses Protection Act (USFSPA)



Reserve and National Guard Pensions continued

If we apply the marital fraction *using years* to his retirement pay, however, then his pension is 75% marital (15 years/20 years = 75%).

HUGE DIFFERENCE!! 33% vs 75% as divisible marital property

Remember USFSPA does NOT say how to divide military retirement. It is completely controlled by the states.



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Present Value Offset

- Have economist or actuary calculate what sum of payments are expected to be and then trade other known assets for that value
- Price a single payment annuity that should yield same value as pension benefits to former spouse and then trade assets for costs of the annuity





# Uniformed Services Former Spouses Protection Act (USFSPA)



## Dividing Disposable Retirement Pay

Disposable = Gross Pay minus

- recoupments or repayments to the Federal government, such as overpayments for retired pay
- Deductions from retired pay for court martial fines or forfeitures; and
- Disability pay benefits; to include
  - VA benefits
  - Military Disability Retired Pay
  - CRSC



# Uniformed Services Former Spouses Protection Act (USFSPA)



In *Mansell v. Mansell* the U.S. Supreme Court in 1989 held that a pension, to the extent it is based on disability compensation, is **not** divisible under USFSPA, and that DFAS may divide only “disposable retired pay” as that term is defined in USFSPA.



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Military Disability Retired Pay

- Given by the Military for Medical Retirement Disabilities
- SM is eligible to receive the higher of longevity retired pay or the disability rated retired pay.
- Problem for spouse
  - Assume retired pay is \$1500/ month
  - Disability pay is \$1200/month
  - So SM gets the \$1500/month because higher
  - Normally spouse would be eligible for % of **\$1500**; BUT
  - USFSPA says CANNOT divide disability pay, so spouse only eligible to divide the difference between the two amounts.. % of **\$300**



# Uniformed Services Former Spouses Protection Act (USFSPA)



## VA Disability Pay

To qualify the SM waives an equivalent amount of military retired pay.

TWO Advantages for SM to elect VA disability:

1. This option doesn't provide an increase in gross income, but it does yield a net increase in pay because the VA portion of the SM's compensation is tax-free.
2. In addition, the VA benefit is not subject to division. Only the longevity-based portion of the pension is divisible in divorce court.



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Concurrent Retirement Disability Pay (CRDP)

- Congress tried to fix spouse problem (YEA!)
- Only applies if SM has over 50% disability rating, served 20 years; has service connected disability
- Phase in of benefits that is divisible with former spouse



# Uniformed Services Former Spouses Protection Act (USFSPA)



## Combat Related Special Compensation (CRSC)

- Only for Combat linked disabilities
- Not eligible for Spouse division
- Cannot receive both CRDP and CSRC
- DFAS chooses the most financially advantageous benefit and it can change each year
- DFAS does not take property awards into account
- CSRC pay can wipe out the restored spouse pay she got from CRDP (BOOO Congress!!)



# Service Issues on Military Personnel



- Who's Who for Service
  - Commanding Officer
  - Office of the Staff Judge Advocate
  - Provost Marshall's Office
  - Office of the Inspector General
- Notification to the JAG office on the military base will often facilitate service of process informally through the legal assistance office of the Office of the Staff Judge Advocate



# Service Issues on Military Personnel



- Who's Who for Service
  - Commanding Officer
  - Office of the Staff Judge Advocate
  - Provost Marshall's Office
  - Office of the Inspector General
- Notification to the JAG office on the military base will often facilitate service of process informally through the legal assistance office of the Office of the Staff Judge Advocate





# Child Support Calculation



## AGENDA

- Basics of Texas Child Support Calculation
- Military Pay = Net Monthly Resources (LES's)
- Anomalies
- General Pointers from the Bench
- \*\*Army Olive Drab Green for military pointers



# Child Support Calculation



## (Basics)

- Texas child support guidelines – TFC Chapter 154
- Guidelines apply in most situations
  - Under \$8,550.00 net child support income –
    - TFC §154.125(a) – application of the guidelines
  - Over \$8,550.00 net child support income –
    - TFC §154.126 – analysis and subtraction of presumptive award
- “Obligee” is custodial parent
- “Obligor” is non-custodial parent who pays child support
- Are you in or out of the guidelines under TFC §154.123
  - Unjust and inappropriate to apply the guidelines or not



# Child Support Calculation



## (Basics)

- **§154.004** - Place of Payment is NON-discretionary to the State Disbursement Unit **(NOT affected by SM status)**
- **§154.007** - Withholding Order is required to be filed with the court **(NOT affected by SM status)** and **may be served on Defense Finance & Accounting Service (DFAS)**
- **§154.061** – Net Monthly Resources calculation
  - Calculate gross on annual basis first and then adjust
  - *Utilize the Attorney General tax table (see next slide)*
- **§154.063** – Party to Furnish Information
  - Commensurate with local rules also
  - Two years tax returns/FIS/**“pay stubs” (LES’s)**



# Child Support Calculation



## (Basics)

- **§154.062** – Net Monthly Resources
  - Court “shall” calculate net resources
  - 100% of wage/salary income & “other compensation”
    - Commissions/overtime pay/tips/**bonuses**
  - Interest/dividends/royalty income
  - Self-employment income
  - **Net rental income (Active Duty multiple homes)**
  - Severance/retirement/**pensions**/trust/annuities/capital gains/social security/ unemployment/disability/worker’s compensation/gifts and prizes/spousal maintenance/alimony



# Child Support Calculation



## (Pay and Allowances)

- **Military Pay Charts available from DFAS at [www.dod.mil/dfas/militarypay.html](http://www.dod.mil/dfas/militarypay.html) (see paper with charts from DFAS)**
- **Taxable v. Non-taxable income**
  - “Pay” is taxable
  - “Allowance” is non-taxable
- **Income for Child Support calculations - all income includable per §154.062**
  - Primary job
  - Secondary job
  - Interest, dividends, etc.



# Child Support Calculation



## (Pay and Allowances)

- **Several different components to military pay (see paper)**
- **Base Pay (taxable quotient per \$154.061) – pay**
- **Basic Allowance for Housing (BAH) - allowance**
- **Basic Allowance for Subsistence (BAS) – allowance**
- **Dive Pay/Jump Pay/Specialty Pay (i.e. medical officers)**
- **Special & Incentive Pays (often deployment related and non-taxable)**
  - **Imminent Danger Pay (IDP)**
  - **Hostile Fire Pay (HFP)**
  - **Family Separation Pay**



# Child Support Calculation



## (Pay and Allowances)

- **Example:**
  - **Base Pay for an **Army E-7 (Sergeant First Class)** with over 14 years in the Army**
  - DFAS table for January 1, 2012 shows gross monthly at **\$3,976.20** (annualize per code but we'll assume it is the same)
  - Employed persons 2012 tax chart shows net of **\$3,236.69** in net monthly resources
  - ***Base Pay* » \$3,976.20 = \$3,236.69**
  - Normal calculation as civilian pay



# Child Support Calculation



## (Pay and Allowances)

- **Example:**
  - **Base Pay » \$3,976.20 = \$3,236.69**
  - **BAH = zip code geographic location and rank**
  - **Fort Hood Active Duty E-7**
  - **<http://www.defensetravel.dod.mil/site/bahCalc.cfm>**

**E-7 with  
DEPENDENTS:**

**\$ 1263.00**

**E-7 without  
DEPENDENTS:**

**\$ 1026.00**





# Child Support Calculation



## (Pay and Allowances)

- **Example:**
  - **Base Pay » \$3,976.20 = \$3,236.69**
  - **\$1,263.00 straight in**
  - **Gross is net for BAH**
  - **BAS = *based annually on the price of food***

**For 2012:**

- **Enlisted: \$348.44 a month**
- **Officers: \$239.96 a month**



# Child Support Calculation



## (Pay and Allowances)

- **Example:**
  - **Base Pay = \$3,236.69 net per month**
  - **BAH = \$1,263.00 gross = net per month**
  - **BAS = \$348.44 gross = net per month**
  - **Total = \$4,848.13**
  - **3 children in the marriage and 1 from previous marriage**
  - **Application of percentage of 27.38%**
- **Child support of \$1,327.42 per month**



# Anomalies



## (Pay and Allowances)

- **Military Bonuses**
  - *Retention bonuses\**
  - *Recruiting bonuses\*\**
  - *Student Repayment Pay*
- **TRICARE health insurance costs**
  - *Active Duty v. Reserve/National Guard Status*
  - *TRICARE Remote/Prime, etc.*
  - *Remember to deduct costs from gross annual pay*
- **The Reservists/National Guardsman as a second job/income (details on next slide)**
- **Veteran's Disability Pay is income per Chapter 154**



# Anomalies



## (Pay and Allowances)

- **The Reservists/National Guardsman as a second job/income**
  - Standard M-Day Soldier v. DIMA drilling Soldier
  - Usually one weekend per month and two weeks annual training
  - Sometimes four weeks at a time once a year
  - Sometimes short stints of Active Duty
  - Sometimes Title 10 deployments
  - Sometimes Title 32 active duty (hurricanes, etc.)
  - Officer v. Enlisted Pay for a standard weekend
    - Approximately \$750.00 per month for a LTC with 15 years



# Anomalies



## (Pay and Allowances)

- **Regulations in the Mix**
  - **U.S. Army – Army Regulation AR 608-99**
    - Most complicated in my opinion
    - As with most things Army the Commander (also Convening Authority for Military Justice) is the decision maker in the room with advice from his Judge Advocate attorney
    - Usually is triggered by a family support complaint be a Soldier's family member to the Commander or the Inspector General (IG)
    - Priority list under the regulation
      - Court Order trumps all (judicial pointer on temporary orders)
      - Written Agreement between parties (marital separation agreement)
      - Oral Agreement between parties
      - Regulatory formula for calculation (pro rata share of Soldier's BAH – BAH Diff)



# Anomalies



## (Pay and Allowances)

- **Regulations in the Mix**
  - **U.S. Air Force – Secretary of the Air Force Instr. 36-2906, *Personal Financial Responsibility***
    - **Generally a requirement to support families through BAH and Air Force will recoup BAH with Dependents if being received by the Airman and no support being given to his/her family**
  - **U.S. Navy – Navy Military Personnel Manual art. 1754-030**
    - **Absent an agreement between the parties or an order, Commander may use the following factors for determination:**
      - Spouse only (as dependent): 1/3 gross pay
      - Spouse and one minor child: 1/2 gross pay
      - Spouse and two or three minor children: 3/5 gross pay
      - Spouse and four or more children: greater than 3/5 gross pay
      - One minor child (no spousal support): 1/6 gross pay
      - Two minor children (no spousal support): 1/4 gross pay
      - Three minor children (no spousal support): 1/3 gross pay
    - **“gross pay” includes base pay and BAH but NOT BAS, hazardous duty pay, sea or foreign duty pay or incentive pay**



# Anomalies



## (Pay and Allowances)

- **Regulations in the Mix**

- ***U.S. Marine Corps, Order P5800, 16a Marine Corps Manual for Legal Administration, Ch. 15, para. 15001***

- **The Corps “should not serve as a haven for personnel who fail to provide adequate and continuous support to their family members”**
- **Agreement between the parties is first priority outside of a court order**

Total # Family Members	Minimum Monthly Support per Requesting Family Member	Share of Monthly BHA per Requesting Family Member
1	\$350.00	1/2
2	\$286.00	1/3
3	\$233.00	1/4
4	\$200.00	1/5
5	\$174.00	1/6
6 or more	\$152.00	1/7 or more



## Chapter 153, Subchapter L, Military Duty



**ALL of the provisions for:**

- **issuance of temporary orders;**
- **designation of persons to exercise possession and access;**
- **additional periods of possession and access;**
- **Modification of the conservator with the exclusive right to designate the primary residence of the child(ren)....**

**....revolve around the following statutorily defined rights per TFC Sec. 153.701 as follows:**

- **“military deployment”**
- **“military mobilization”**
- **“temporary military duty”**





## Chapter 153, Subchapter L, Military Duty



First of all, a check of Westlaw/Nexis reveals ZERO clarification of these terms so defer to the argument relating to the statute (there is one reference in *In re Lee*, 411 S.W.3d 445 but only as to best interests)...

TFC Sec. 153.701(2) - **“military deployment”**... “means the **temporary transfer** of a service member of the armed forces of this state or of the United States serving in an **active-duty status to another location** in support of **combat** or some other **military operation.**”

- Meant to distinguish **“deployment”** from other temporary type moves
- Meant to encompass active duty service members who move to another unit for temporary purposes but NOT for normal military moves
- Might include STATE active duty types
- Look for **PCS (permanent change of station) orders** which are NOT contemplated by this statute



## Chapter 153, Subchapter L, Military Duty



**TFC Sec. 153.701(3) - “military mobilization”**... “means the *call up* of a National Guard or Reserve service member of the armed forces of this state or the United States to *extended active duty status*. The term *does not include* National Guard or Reserve *annual training*.”

- The TFC dips its toe into the raging rapids of STATUS distinctions here
  - Title 32 v. Title 10 status components
  - AGR v. M Day guardsman and reservists
  - IRR status (may be ordered to active duty as well)
- Meant to be used primarily to cover NON active duty (National Guard or Reservists)
- Meant to be used to cover prolonged periods of military active duty for service members NOT normally on active duty for combat missions or operational missions or schools for training



## Chapter 153, Subchapter L, Military Duty



**TFC Sec. 153.701(4) - “temporary military duty”** ... “means the *transfer* of a service member of the armed forces of this state or the United States from one military base to a *different location*, usually another base, *for a limited time* for *training or to assist in the performance of a noncombat mission*.”

- Meant to cover schools (training) – JAOBC/CLE at JAG school
- Meant to NOT cover combat deployments (noncombat mission)
  - Catch all clause
- Meant to be distinguished from «normal unit changes» (different location)
- Look to the orders for movement (school orders for active duty, etc.)



## Chapter 153, Subchapter L, Military Duty



### TFC Sec. 153.702 – Temporary Orders

- Grants the court the ability to enter temporary orders despite the SCRA's definition of judgment to include temporary orders as it also **terminates** those temporary orders by **operation of law** under subsection (d);
- Substantial distance from the conservator's residence so as to materially affect the conservator's ability to exercise rights and duties echos the language in the Servicemembers' Civil Rights Act
- If a non-parent then no authority for the court to order child support
- EITHER conservator may file for one of these orders without demonstrating a material and substantial change of circumstances other than military deployment, military deployment or temporary military duty



## Chapter 153, Subchapter L, Military Duty



### **TFC Sec. 153.703** – Version for PRIMARY parent who gets deployed

- States that a court MAY enter a temporary order for a designated person to exercise the exclusive right to designate the primary residence of the child(ren) with the following **order of precedence**:
  - the other non-primary parent;
  - IF the non-primary parent is NOT in the child's best interest then a designated person elected by the primary parent;
  - IF neither of those is possible or in the child's best interest then a person chosen by the court.
- If a non-parent is designated then they will have rights per TFC Sec. 153.371 as a temporary sole managing conservator;
- If a non-parent then the court limit or expand the rights of that non-parent



## Chapter 153, Subchapter L, Military Duty



**TFC Sec. 153.704** – Version for PRIMARY parent who gets deployed for visitation by designated person

- States that a court MAY enter a temporary order making the NON-primary parent the PRIMARY parent (non-deploying parent) and then can enter a visitation order for a designated person for visitation who is designated by the formerly primary parent
- Should be the same as the visitation order for the formerly non-primary parent
- Designated person has the rights and duties of a possessory conservator now under this new temporary order



## Chapter 153, Subchapter L, Military Duty



**TFC Sec. 153.705** – Version for non-PRIMARY parent who gets deployed for visitation by designated person

- States that a court MAY enter a temporary order to enter a visitation order for a designated person for visitation who is designated by the deploying non-primary parent
- Should be the same as the visitation order for the deploying non-primary parent
- Designated person has the rights and duties of a non-parent possessory conservator now under this new temporary order
- If a non-parent then the court limit or expand the rights of that non-parent



## Chapter 153, Subchapter L, Military Duty



### **TFC Sec. 153.709** – Make up Visitation for Returning Deployed non-primary Parent

- 90 days from the conclusion of the non-primary parent's deployment
  - Look to the date of the end of the activation orders
- Court should compute the periods of visitation missed during the deployment and then award the additional periods of possession and access to compensate
- Factors for the court to consider:
  - Visitation that the non-primary deployed parent would otherwise have had if not for the deployment
  - Whether or not a designated person was ordered on temporary orders
  - Any other factors the court deems appropriate





# General Pointers



- **Default Judgments are TRIALS wherein the other side is simply not there to interrupt you in your presentation**
- **§154.063 – Party to Furnish Information**
  - Commensurate with local rules also
  - Two years tax returns/FIS/“pay stubs” (*LES's*)
- **§154.130 – Findings in Child Support Order**
  - Net resources of the obligor per month
  - Net resources of the obligee per month
  - Percentage applied to the net monthly resources
  - Any findings to support a variance that the application of the child support guidelines are unjust and inappropriate under §154.123



# General Pointers



- Pleadings and Motion Practice are the start of your request and evidence
- If you want the court to vary from the application of the child support guidelines then plead that and the factors under §154.123 that you are asking the court to rely upon for the variance
- If you intend to “bust the cap” under TFC §154.126 then plead that so the court may rely on it
- Ask your client about the Obligor’s “other children”
- **DO THE MATH** - it’s fine if the Judge reaches for his/her calculator on the Bench but not if he/she does it out of necessity because the evidence is not there or confused



# Practical Family Law Military Applications



General Questions?