

Military Pensions – Former Spouse Benefits
Supreme Court Converted Guaranteed Award into Contingent Award

The Article is a reaction to the Supreme Court Decision:

Howell v. Howell (137 S. Ct. 1400 (2017))

Attorneys are alerted to a new circumstance relating to military divorcing spouses in matters in which the Member is a Reservist under age sixty or a Regular Component Member who has not attained twenty “Qualifying Years”.

In cases involving the above type members it is traditional to award the Member’s spouse a percentage of the Marital portion of the Member’s Retirement Allowance. Based on the terms of the Marital Settlement Agreement a Former Spouse then has an expectancy of future pension payments when the member retires.

The Supreme Court in Howell, converted the Marital Settlement award to the Former Spouse from a “guarantee” into a “contingency”.

Explanation.

Subsequent to divorce, when the Member elects to retire and further elects to receive all or a portion of his/her pension as Combat Related Special Compensation the award to the Former Spouse pursuant to Howell is extinguished.

Reasons:

McCarty v. McCarty, 453 U.S. 210
10 U.S.C. 1408(a)(4)(A)(ii)

Attorney Alert.

Most likely the sweeping language of Howell is an insurmountable bar to attempted mitigation by the Former Spouse. The Pension Benefits due the Former Spouse will terminate. Because of this exposure it is suggested that attorneys representing a Former Spouse have withing his/her file a letter signed by the Former Spouse acknowledging this hazard.

Attorney’s seeking amplification of the impact of Howell and “possible” mitigation, contact Rodney D. Troyan, Esquire of Troyan & Associates, P.A.