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## **FEDERAL RETIREMENT PLANS**

**THE “MYSTERIOUS ALPHABET” OF THE FAMILY  
COURT [a/k/a “the Green Mile” for family law  
practitioners]**

### **I. FEDERAL PREEMPTION.**

***Fisher v. Fisher*, 319 S.C. 500, 462 S.E.2d 303 (Ct.App.1995)**

*“Federal preemption did not preclude application of state equitable distribution laws where Congress had not explicitly excluded (military) early separation incentive pay from state apportionment laws.”*

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#### **□ *Social Security benefits***

***Simmons v. Simmons*, 370 S.C. 109, 634 S.E.2d 1 (Ct.App.2005).**

*“Although we are sympathetic to Wife’s claim, **Social Security benefits** simply cannot be divided in an equitable distribution award. Because Congress preempted the Social Security arena, state courts do not have subject-matter jurisdiction to mandate distribution of such benefits whether by agreement or otherwise.”*

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□ **Military Survivor Benefit Plan annuity**

***Silva v. Silva*, 333 S.C. 387, 509 S.E.2d 483 (Ct.App.1998).**

*“Major Silva (husband) and Brigitte (first wife) married in 1972 and divorced in 1985. In a settlement agreement merged into the divorce decree, husband agreed to designate Brigitte as the beneficiary of his military Survivor Benefit Plan. The decree provided further that the husband would complete all necessary paperwork and provide documentation that he had done so. Although sometime during their marriage husband had named Brigitte as his spouse beneficiary, he failed to comply with the court’s order and execute the necessary forms to ensure that Brigitte, as a former spouse, would receive the benefits.*

*In 1987 husband married Wendy (second wife). In December 1992 husband died. Because husband failed to complete the paper work that would allow Brigitte as his former spouse to collect the SBP annuity, Wendy, as husband’s widow, began receiving the annuity pursuant to the default provisions of the SBP.*

*In 1994 Brigitte filed suit in circuit court seeking to (1) impose a constructive trust over the SBP payments being received by Wendy, (2) order an accounting of all SBP proceeds, and (3) disgorge all payments already received by Wendy. At trial, Brigitte’s attorney conceded that husband assumed that Brigitte would receive the benefits because Brigitte was still named as the spouse beneficiary. The attorney also stated Brigitte was not alleging husband was guilty of fraud, deceit, or malice by his inaction. The trial court refused the requested relief.*

*“The SBP (military Survivor Benefit Plan) was created by Congress in 1972. The system was designed to provide an annuity payable to a retired service member’s surviving spouse or child upon the service member’s death. ... A 1982 amendment expanded SBP coverage, allowing a service member the right to designate a former spouse as the beneficiary. ... The following year Congress clarified the 1982 amendment and provided a retired participant the right to name a former spouse as the beneficiary if at the time of retirement the service member had designated the spouse as the beneficiary and the couple subsequently divorced. To do so, however, the service member was required to notify the appropriate government official in writing within one year following the date of the decree of divorce, dissolution or annulment.*

*...A former spouse is allowed only one year from the date of the court order or filing to do so (write the appropriate government official upon the failure or refusal of the service member to have sent this written request). **Congress has further provided that the SBP annuity ‘is not assignable or subject to execution, levy, attachment, garnishment or other legal process.’***

*...We find the reasoning of the Georgia court persuasive and conclude that the provisions of the SBP make clear Congress's intention to occupy the field under these particular circumstances."*

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□ ***Employment Retirement Income Security Act (ERISA)***

***Walsh v. Woods, 371 S.C. 319, 638 S.E.2d 85***

***(Ct.App.2006)***

*"Any and all State laws insofar as they relate to employee benefits plans are preempted by ERISA. This Court has recognized that the preemptive effect of ERISA is a broad one.*

*...While ERISA related claims involve subject-matter jurisdiction, 29 U.S.C.*

*§1132(3)(1) vests both state and federal courts with concurrent subject-matter jurisdiction of certain civil actions brought by the participants or beneficiaries against an employee benefit plan. Nevertheless, under preemption principles, federal ERISA law must control our decision on the issue of Wife II's claim to the SSB (surviving spouse benefits).*

*(Factual note: In the present case, at the time husband retired in 1989, the SSB vested in Wife I because the two were still married. Although husband had a ninety-day window prior to his retirement in which he could have, with Wife I's written consent, removed her as a beneficiary of the SSB, this was not accomplished. After husband retired, even if Wife I had agreed to waive her SSB, she could not do so under ERISA. Wife I's purported waiver in the divorce agreement was ineffective to waive the SSB because ERISA does not allow a beneficiary to waive SSB after a plan participant retires.*

*... ERISA provides SSB may not be paid to a spouse who marries a participant after the participant's retirement."]*

*...It does seem untoward that husband should not be able to have a component of his qualified joint and survivor annuity awarded to Wife II, rather than a woman from whom he has been divorced and did not have a relationship with for years before his death. However, in keeping with our reading of federal law, there is no other resolution possible."*

## **II. GLOSSARY OF THE FEDERAL ACRONYMS (and the websites which should answer your essential questions regarding the various federal retirement plans):**

### **Court Order Approved for Processing (COAP)**

- [www.vecon.com](http://www.vecon.com) (Voit Econometrics Group)

### **Civil Service Retirement System (CSRS)**

- [www.opm.gov/retire/pre/csrs](http://www.opm.gov/retire/pre/csrs)
- [www.federaltimes.com/federal-retirement/tag/csrs/](http://www.federaltimes.com/federal-retirement/tag/csrs/)

### **Defense Finance Accounting Service (DFAS)**

- [www.dfas.mil/](http://www.dfas.mil/)
- [www.dod.mil/dfas](http://www.dod.mil/dfas)

### **Employee Retirement Income Security Act of 1974 (ERISA)**

- [www.dol.gov](http://www.dol.gov)
- [www.erisa-benefits.com](http://www.erisa-benefits.com)

### **Federal Employee Group Life Insurance (FEGLI)**

- [www.myfederalretirement.com](http://www.myfederalretirement.com)

### **Federal Employee Health Benefits (FEHB)**

- [www.opm.gov/insure/health/](http://www.opm.gov/insure/health/)

### **Federal Employee Retirement System (FERS)**

- [www.federalretirement.net](http://www.federalretirement.net)
- [www.myfederalretirement.com](http://www.myfederalretirement.com)
- [www.opm.gov/retire/pre/fers/index.asp](http://www.opm.gov/retire/pre/fers/index.asp)

### **Internal Revenue System (IRS)**

- [www.irs.gov/faqs/index.html](http://www.irs.gov/faqs/index.html)

### **Office of Personnel Management (OPM)**

- [www.opm.gov](http://www.opm.gov)

### **Social Security Administration (SSA)**

- [www.socialsecurity.gov](http://www.socialsecurity.gov) [retirement planner]
- [www.aarp.org/money/](http://www.aarp.org/money/)

### **Thrift Savings Plan (TSP)**

- [www.tsp.gov](http://www.tsp.gov)
- [www.frtib.gov](http://www.frtib.gov) [Federal Retirement Thrift Investment Board]

### **Uniformed Services Former Spouse's Protection Act (USFSPA)**

- [www.military.com/benefits/retiree/](http://www.military.com/benefits/retiree/)