THE WASHINGTON RAMBLE

By Michael P. Smith
ARA Executive Director

This will be a rather bleak article. Never in my 35 years in Washington has there been a totally unaccountable, dishonest, shallow thinking, gutless, body of elected officials.

At this writing, most of Congress are in vacation mode. Given this disappointing 2013 Congress, 2014 does not look favorable. Unfortunately, the goal of repealing the Former Spouse Protection Act (USFSPA) looks unattainable. Too many obstacles and too many distracting issues. My recommendation that we keep hammering Congressional members with our interest and making our voice loud and clear in military and veteran-related meetings. Believe a number of these voting members pay attention to our military...even though many have not served. To date, in concert with the National Military Veterans Alliance (NMVA), we have made progress. Our association with NMVA has clearly helped ARA immensely. It’s the identity of NMVA with the majority of lawmakers that makes the difference with Members of Congress. In addition, ARA and NMVA are continually working to support our military even during turbulent times.

Speaking of a disappointing Congress, it took my “breath away” when the recent “Budget” was announced “cutting” our military Cost of Living Adjustment (COLA)! This was the most absurd action taken to date. Upon investigation with various member offices, they said: “it was a line item error and will be corrected.” To date, haven’t seen any corrections. I was further assured by Ohio Representative Bob Gibbs (R-7th District) that this oversight will not go into effect. We are keeping a watchful eye on this and other unthinkable actions like the Health Care debacle. Over 7 million Americans have been affected by this insane legislation. Again, liberal thinking has infected the once-solid professional legislative leadership.

Frankly, given the past five years, we have seen liberal ideas have been bad ideas. Is it right for your government to force you to choose between upholding your values and following the law? Is it right for your leaders to think the solution to the debt is more and more spending? Is it right for the administration to act as if the Constitution of the United States were a mere artifact? Press your local elected Congressional Members for answers! The scary truth is we are in danger of becoming a country of whose government is no longer “of the people, by the people, for the people!”

In 2014, we will be facing another pivotal time for our country. The midterm elections will hopefully bring back accountability and responsible leadership!

We must continue to help our veterans. The Veterans Administration is still five-thousand treatment cases behind. This is outrageous and totally unacceptable. Clearly, members of the House Armed Services Committee are closely watching the status of veteran treatment issues he brings forth in his lecture.

Over the past decade I have published and republished Dr. Baskerville’s work on the Equal Justice Foundation’s web sites, as well as documented and provided examples of the issues he brings forth in his lecture.

For example, in a recent study of veteran arrests we found less than 50% of the arrests for “domestic violence” did not involve any charge of violence. In 2005 I pointed out the use of the Violence Against Women Act as a “honey trap” and the impact on national security, which Dr. Baskerville brings up again in his lecture.

In cooperation with Dr. Baskerville, and many other male and female authors, since 2001 the Equal Justice Foundation has been pointing out the disastrous impact of such policies as “no fault” divorce has had on families and marriage. At present I estimate that only about 1 child in 10 is born into a family where the biological parents are married and remain married until the children of their union reach age 18.

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As a new year begins, it seems the Pentagon’s military personnel suicide crisis, that frustrated former Secretary of Defense Panetta, and by extension, its link to USFSPA provisions is over. At least, that’s what the main-stream media’s silence suggests.

The Pentagon’s new military personnel sex-attack crisis is attracting the attention of our Commander in Chief: He is warning the Pentagon’s Joint Chiefs and Department Secretaries to either solve this problem or he will.

Meanwhile, upwards of $90,000,000 is being redistributed from over 200,000 retired military retired pay into accounts, as court ordered jointly earned marital property of their former dependent spouses. We have re-published the latest DFAS statistics regarding this involuntary servitude situation. Please note, more than 50% of USFSPA casualties are senior NCOs.

Sooner than later, it seems, a marriage is destined to become a marriage, as a divorce has become a divorce, as more and more Americans marry one another regardless of gender, those who believe in the institution of Holy marriage, excluded.

We receive letters from members who advise us how family/domestic law in their states. We are happy to share this information, while protecting the author’s identity. We encourage you to share your military divorce experience and knowledge with us. It is also important for you to advise us when your contact information changes. When we believe it is time for you to share your USFSPA sentiments with those elected to represent your interests in Congress and your State Legislature, we want our notice to be delivered to the correct address.

At your service,
Dennis Egge; President

Letters to the Editor

In Wyoming, AN ACT relating to domestic relations; limiting the consideration of veteran's disability benefits in the division of property upon divorce Section 1. W. S. 20-2-114 is amended to read:

(b) In making a disposition of property pursuant to this section, a court shall not do any of the following:

(i) Consider any federal disability benefits awarded to a veteran for service-connected disabilities pursuant to title 38, chapter 11 of the United States Code;

(ii) Indemnify a veteran’s spouse or former spouse for any waiver or reduction in military retirement or retiree pay related to receipt of veteran disability benefits pursuant to title 38, chapter 11 of the United States Code;

(iii) Award any other income or property of the veteran to the veteran’s spouse or former spouse as compensation for any waiver or reduction in military retirement or retiree pay related to receipt of veteran disability benefits pursuant to title 38, chapter 11 of the United States Code. Section 2. This act is effective July 1, 2013.

In 2003 when I started the (Title 38 USC) 5301 club no one else saw what was happening (to divorcing Veterans compensation). Now we have at least 6 states that have adopted enforcement of 5301. Mark (Beres) got the first direct hit in Arizona. But now we have Texas, Wyoming, Mississippi, Ohio, and several others that have done the same thing. I still say the real answer is action at the federal level across the board. But, for now, this is a very good sign.

In Connecticut, SB 932 repeals Section 1. Subsection (c) of section 46b-81 of the general statutes and the following (underlined) language is substituted in lieu thereof:

(c) In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 46b-51, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates. The court shall exclude from the amount and sources of income considered in this subsection any amount of disability compensation received by either party from the United States Department of Veterans Affairs.

On August 30, 2012, the Mississippi Supreme Court held, in Burkart v Mallard, that the Former Spouses Protection Act does not grant state courts the power to treat

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I ask how can the United States survive as a Christian nation if that does not change, and soon? And change cannot, and will not occur without your support of work by Dr. Baskerville and his colleagues exposing the ideology driving this destruction!

As always happens, the proponents of the ideology Dr. Baskerville so ably exposes and discredits are outraged. In a 2007 article Dr. Murray Strauss at the Family Research Institute of the Univ. of New Hampshire well illustrated the methods used by these ideologues to conceal and distort the evidence refuting their dogma.

Method 7 proposed by Dr. Strauss, where researchers who produce evidence that contradicts their ideology are harassed, threatened, and penalized, is particularly applicable to what Dr. Baskerville now faces. I myself have received death threats and been harassed numerous times by radical feminists. So I am quite sympathetic to his plight and ask again that you support him.

The evidence for Dr. Baskerville's statements in his lecture is overwhelming and should you wish for additional documentation and examples supporting his work I would be happy to provide that.

And it is on the basis of that experience and my long association with Dr. Baskerville that I recommend him without reservation and wholeheartedly endorse his work.

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as property divisible upon divorce military retirement pay that has been waived to receive veterans' disability benefits.

Because judicial precedent requires PA judges to divide the (Military retired) pay as property -- HB 1192 informs the judges that they have a choice as USFSPA gave the states a choice but the states did not give the judges a choice. It is my understanding that those who are subject by divorce to paying a former spouse would be able to sue to have it stopped, not re-open the divorce, but ask for a judge. Those currently in the process would have a chance to be heard case by case. It is another way to get to the Supreme Court while helping those currently in the process of divorce.

Secretary (of Defense) Hagel is going to take legal action to compel states to recognize same sex marriage). Well, if he is going to take action to compel states to recognize same sex marriage in family law matters, don't you think he has a similar duty to compel states to comply with limitations on "confiscating" payments due to service members and giving it to former spouses? As a separate but related question / comment, does the Secretary of Defense have a fiduciary duty to inform potential enlistees and officers of the implications of the USFSPA?

We support (Pennsylvania) HB 1192 because it advances our agenda: Now military retirees will have an opportunity to argue to the judge that division is not automatic but that a finding must be made as to the reason for any division.

As noted, the “Former Spouse Protection Act (USFSPA)” is still on the agenda for many Members of Congress. We need to showcase the importance of repealing this act to Congressional members on both sides of the “aisle.” Most have indicated to me that the USFSPA is unfair and should be repealed...but here we sit and it is still affecting many. ARA must “educate” new and senior Members of Congress. Again, your voice is needed.

As we begin 2014, we must push for action: (1) Answers to what happened to an American Ambassador and three other Americans killed needlessly. (2) Why is the IRS still attacking conservative groups? (3) Why were veterans not permitted to visit their own memorials in Washington during the recent government shut-down? (4) Why is unemployment still increasing? (5) Why can’t returning veterans receive immediate medical treatment and then find a job? (6) Why do we have to debate an increase in our “debt ceiling?” (7) Why do we continue to spend given our 17-trillion dollar debt? What we have today is a total non-responsible and unaccountable government.

We have to stop foreign aide...especially to those that do not like us!

The country of Egypt comes to mind. Let’s take care of Americans first. In 2014 we have to stay focused. We have to help veterans find jobs. We have to defund the current “Affordable Health Care Law.” It is more than a train-wreck. This unthinkable legislation will “kill” many in the medical profession along with forcing MDs out of their practice. The big costs are now shifting to “young adults” that do not have jobs or the cash-flow to pay for their health insurance. How is a post-college age professional able to pay for health insurance and then their academic loans while looking for a job?

2014 will be a challenging year. Much needs to happen on the “Hill.” We will keep the legislators feet to the fire...and you posted on our accomplishments! Stay safe!

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ment...but we all have to be pushing our members for action. Believe me without Congressional constituents nothing happens in Congress. While on holiday recess, many members are getting an earful. However, collectively as Americans we must push to make things happen. I become a real “pest” when in Congress. While helping those currently in the process of divorce.
ARA is pleased to print this article by Marsha Thole, co-author of the book DIVORCE AND THE MILITARY II, on interpreting your legal bills. We know that the cost of a divorce is high, but when you are not paying attention to your bills, you may be paying far more than you expected. Lt Col Thole has written this article from her personal experience in dealing with attorneys and clients.

Are you paying too much for legal services or not paying enough attention?

If you have read my book, then you know that it contains valuable information about how to manage your divorce case and to review the bills you receive from your attorney. Further, you are told to keep a log, preferably daily, and note whenever you talk to your attorney or someone else at the firm, and when you receive documentation in the mail or via email. From what I have seen, either most divorce clients are not doing that or, if they are, they are overwhelmed and in the dark on how to interpret the bill.

To assist ARA readers, I have written this article on what you should do when it comes to managing your legal bills in a military divorce. Knowing the nuances of law firm billing practices can help you manage your own case and, thus, keep expenses to what are absolutely necessary. To be clear, most law firms are following good practices when it comes to billing, but there are also some that are unfair to clients (e.g., overstaffing, unnecessary research), that may reflect lax time and financial controls, or even outright fraud.

Some attorneys are great at providing a true monthly invoice that shows the date, amount of time, the description of what is being billed, and the amount. Unfortunately, they are the exception in my experience. Others just send you a bill and list some figure for the hours. Unless you are keeping your own tracking log, you, too, have no idea as to what you are being billed for, much less whether that amount can even be traced to an actual service that you received.

While billing practices vary widely from attorney to attorney, you, the client, are still the one in charge. The attorney is, in effect, your employee—you hired that person. If you do not keep track, then things will go awry. Yes, there are fee disputes because there is attorney padding, but many are just misunderstandings or, in some cases, just bad math. You won’t know which it is if you are not paying attention.

So when and how should you question your bill? The very first thing you need to do is read your retainer contract that you have with the attorney. Know exactly how much you will be billed for the attorney’s time and the time of a paralegal and secretary. If a junior attorney is assigned to your case, then that fee should not be as high as that for a partner or more experienced attorney. If it is not mentioned, then ask how phone consultation will be billed. Some law firms bill in 15-minute increments. That means you need to “batch” your questions to make the most of the call or the email that the attorney has to read and respond to.

It also means that you keep in mind that your attorney is not your therapist. Attorneys charge as much to listen to you as they do to talk to you. Make sure you have a true question. Determine whether your question needs to even be answered by the attorney and whether it needs to be answered right now. Perhaps a legal secretary, the office manager, or a paralegal can respond. If so, note that in your log so that you are not billed at the attorney’s rate. You should never be charged when you need to discuss your bill.

Also, know whether one attorney or more will be assigned to your case. If there is one attorney named in the contract, then you should be paying for one, not many. When a new name pops up on the bill, you should question it.

Finally, in reviewing the contract with the firm, know how expenses are tracked. Ask the attorney for an approximate amount that expenses will run, and make sure that estimate is in the contract. Tell the attorney that you will not be charged over the estimate without your prior approval. These days, anything and everything is charged to the client, sort of like the airlines’ charging you for every little thing these days. But you should challenge charges that obviously fall into the firm’s routine overhead. For example, the firm pays for an annual subscription for access to LexisNexis (and its variations). If it is a large firm, and it bills clients for such usage, the firm has probably collected the annual cost many times over. So, do find out which expenses are routinely billed to the client.

Once you know what your contract says and how the billing should work, then proceed to review each bill in detail. And do it as soon as you receive a bill, which should be monthly. Do the dates match those in your log? Do the time increments match those you have noted? Is there an entry for something that is purely clerical, yet the expense is high? Question it. Is there an uptick in legal time? If so, find out the reason. Maybe your attorney decided to consult with three others in the firm. Why was that necessary? If you are being charged at the attorney’s rate for something that is administrative or clerical in nature, you need to challenge that, too.

Another problem is overstaffing—a problem for you, that is. If you are assigned one attorney, then the billing should reflect that person’s hours only. If you find that others are working on your case, is that something you agreed to in the contract? If you think too many attorneys are working on your case, say something and request that they reevaluate the strategy in your case. (Speaking of strategy, do you even know what it is for your divorce case?) In one bill I reviewed, it was amazing to find that a person was working more than 24 hours in one day. Just amazing!

Make sure that when a paralegal is working on your case, that you are billed at that person’s rate, and not the attorney’s rate. I have seen where the attorney has one rate, and that is it, and that person will tell you it also covers the paralegal’s time. Well, then, the bill needs to note how much of that was the paralegal’s time, and question it, if nec-

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ecessary. This is one way attorneys pad the bills to clients.

In one case I had, the attorney was billing the client for my services, and then taking nine months to pay me. The problem was that the attorney was charging the client double what I charge! From that point on I decided that I would bill the client separately. Attorneys are under great pressure to meet billable hour quotas, and they are high. But you don’t want them doing it at your expense.

As you keep your log, note the total number of hours each month for which you are being billed. It is very easy for a law firm to pad a bill gradually, so that increases are subtle and not noticeable. For example, is there high staff turnover, meaning new people have to spend time to get up to speed on your case—at your expense, of course? I have turned down several requests to be an ‘expert witness.’ In my opinion, there should not be a need for one in a military divorce case. If the attorney is knowledgeable about the military, about military divorce, and about the federal law (USFSPA), there is no need to hire a so-called ‘expert witness’ to assist. Of course, if you are a multi-millionaire and the circumstances warrant, go for it. You, the client, probably know as much about military divorce as the next expert.

Finally, as you review your bill, think “hidden costs.” Besides wasting money on unnecessary experts, you do not need to be paying to educate legal staff, either. If they are claiming research, then ask for the results of that research. You want to know what they are researching and why. When staff members log into one of the major legal research software programs, they enter their name/ID, the firm’s name, the client’s name, case number, etc. So, demand to see all that—the cover/summary sheet, if you will.

When I was going through college to get my degree in Paralegal Studies, I learned about the online resources; when I used them, I received a printout at the end showing my time online and other information. In my own divorce, I was charged more than $1,200 for “online research.” This was a one-line entry on a bill, making me wonder whether someone had stayed up all night to rack up a research bill that large. I asked for a statement as to what was being researched, why, and copy of the summary sheet and results of the research. The law firm could not produce that documentation and quickly deducted that charge from my bill. In my opinion, they never did the research, but they had no problem charging me for the phantom service. (I ended up firing that attorney and hiring another one, and after the first attorney finally admitted he knew less about the USFSPA than I did, not to mention their trying to charge me for something they did not do.)

If the firm has claimed to be military divorce experts, then they do not need to be constantly reinventing the wheel on each new divorce client; if they are, then you are being billed needlessly. In short, you should not be billed for research in an area the firm already claims expertise in; if you are, then question it. Do not be afraid to ask about any item on a bill. There is something terribly wrong when a client is too intimidated to talk to his or her attorney about a bill.

One last area that may apply to some cases is that of travel required on the part of your attorney. An example is the client who may live in a small town, and the attorney may be in a big city miles away, but still within the state. When the attorney or someone from the firm’s staff has to travel on behalf of your case, e.g., travel to your town to take depositions, there will be travel expenses. Those expenses should be what you would hold yourself to. Do you travel first class? If not, then your attorney should not travel first class at your expense. Do you pay for all the extras in a hotel room, such as in-room movies, bar bills, room service? If not, then you need to ensure your attorney understands that you will not pay for travel you would not spend on yourself, including fancy meals, etc. Be sure you insist on a complete accounting for any travel expenses, and that you will want to see receipts for any expenses over a certain dollar amount, such as $5.

In summary, managing your legal bill is YOUR responsibility. Law firm personnel are humans, and they will make mistakes. And while law firms are there to make a profit, that profit should not come at the expense of overbilling its clients. The ideal situation is that your log and notes match what is on the detailed bill, and the services have been fairly billed. No detailed bill? Demand one. The bottom line is communication and being organized. YOU need to keep a log. YOU need to be involved in your own case. YOU need to ask about questionable expenses on your bill—and do not wait to do that—do it immediately upon receipt and review. In short, YOU are in charge, just as much as the attorney is in charge of his or her client’s case. This is not the time to cower like a puppy. Be involved in your own case. The consequences for not being involved are too high financially.

POST NOTE: I am not a law firm billing expert by any means, and there are resources available on law office accounting that you can read. This article is written from the perspective of my dealing with attorneys and clients for nearly 20 years—nothing scientific here, just some of the more common issues I have come across when people have asked me to help them decipher their legal bills. There are many other aspects to managing a law office, whether it is a large firm or a solo practice. But they all have one thing in common: Your legal team needs to be giving you, its client, quality service at a fair price. (I won’t get into whether $300 an hour is a fair price.)

--Lt Col Marsha Thole, USAFR (Ret), is co-author of DIVORCE AND THE MILITARY II and a degreed paralegal who works with attorneys and clients on military divorce cases. She is available to assist you in interpreting your legal bills and working with your attorney. She does not give legal advice. You may contact her at (505) 856-2080 after 10 AM Mountain Time.

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The Military Marriage Manual Report

The term “vested pension” refers to retirement pay that begins if employment is terminated. Military retirement pay is vested at what equates to twenty years of service. If a service member resigns (or separates) prior to this, no retirement pay is received. Most states do NOT require the military pension to be vested at time of divorce. Indiana is an exception.

This requirement makes the state of Indiana an attractive state for divorcing service members to set up their domicile, retire, and divorce. When looking at divorce from a perspective of equitable division, Indiana favors the service member. In most cases, we could assume the service member would want Indiana to have jurisdiction.

Military spouses in troubled marriages should be cautious of service members trying to get stationed in Indiana. Is there an underlying intention to file for divorce? Spouses do not have to relocate. Refusing to relocate may keep jurisdiction possibilities open for the military spouse.

The spouses home of record may also play a role in jurisdiction. See our example where a spouse’s home state (New York) was used for economic and property division, visitation, and child custody, yet the decree was finalized in South Carolina. Lansford v. Lansford. One thing that makes military divorce unique is the fact that there are often two or more choices of where to file.

Editors note: It is our understanding that Indiana courts may not award divorcing dependent military spouses any portion of their military sponsors retired pay as jointly earned marital property, unless they are also personally vested in the subject marriage.

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