



DEPARTMENT OF VETERANS AFFAIRS

Office of the General Counsel
Washington DC 20420

NOV 30 2012

Mr. Edwin Crosby
2835 S. Fort Avenue
Springfield, MO 65807

In Reply Refer To: 022

Dear Mr. Crosby:

I am writing in response to your recent phone calls to the Department of Veterans Affairs (VA) Office of the General Counsel requesting a policy statement regarding 38 U.S.C. § 5301(a) for use in a domestic relations case.

VA generally does not intervene in state court cases between private parties, nor is VA authorized to assist parties in private litigation. Therefore, VA cannot provide the statement you have requested. However, to assist you in understanding the law relating to VA benefits, I provide the following information.

Under 38 U.S.C. § 5301(a), VA disability compensation generally is exempt from attachment or garnishment for any purpose. Section 5301(a) of title 38, United States Code, exempts VA benefits from taxation, creditors' claims, and attachment, levy, or seizure under any legal or equitable process, either before or after receipt by a beneficiary. In *Wissner v. Wissner*, 338 U.S. 655, 659-60 (1950), the U.S. Supreme Court held that a then-existing statute containing language substantially similar to current section 5301 barred state courts from subjecting protected VA benefits to division for purposes of distributing marital property. However, for the different purpose of establishing child-support or spousal-support obligations, other authorities indicate that section 5301(a) does not protect VA benefits from being considered as available resources in determining a support obligation or from being attached in certain circumstances.

In the Child Support Enforcement Act, 42 U.S.C. § 659, Congress created an exception to section 5301(a) applicable to Veterans who waive military retired pay to receive VA disability compensation. Under that statutory authority, VA disability compensation may be garnished up to the amount of military retired pay waived, but only for purposes of alimony or child support pursuant to a court order. Thus, section 659 provides authority to subject VA compensation payments to court-ordered garnishment for alimony or child support, but limits the amount subject to garnishment to the amount of military retired pay waived in order to receive disability compensation.

Also, the U.S. Supreme Court held in *Rose v. Rose*, 481 U.S. 619, 634 (1987), that the provision currently codified at section 5301(a) "does not extend