

5227 Mallard Cir. SW
Albany, Oregon 97321
December 20, 2011
Linn County case number 081820 Appeals Case A144940

Jim Willis, Director ODVA
700 Summer St. NE
Salem, OR 97301-1285

Dear Jim Willis, Director ODVA,

In regards to: The misuse of VA compensation funds for spousal support awards

I am writing to request your support and assistance with a problem facing our disabled veterans. As you are already aware, the state courts have been unlawfully using VA compensation payments for the calculation of spousal support awards. I am driving my case to the Oregon Supreme Court level in order to get this abuse stopped. In order to do this, I need the help and support of the ODVA and the voices of people nationwide.

I would like to request your support and that of the ODVA. I would like you to assist me in gathering the support of the United Veterans Groups of Oregon (UVGO), their members and the support of their National offices. I would also appreciate your assistance speaking with the Governor to gain his support.

Organizations can help support the protection of veteran's compensation payments by writing directly to the Oregon Supreme Court Justices. Individuals can help by signing the online petition at the link provided below. I appreciate all of the hard work you have done for our veterans and I look forward to working with you to continue protecting our veterans.

Sincerely,

Peter Barclay

Petition Link

<http://www.change.org/petitions/help-protect-our-disabled-veterans-from-unlawful-attachment-of-benefits>.



Oregon

Justitia sub Libertate

Department of Veterans' Affairs

700 Summer St. NE
Salem, OR 97301-1885

SERVING
OREGON VETERANS
SINCE 1945

January 17, 2012

PETER BARCLAY
5227 MALLARD CIRCLE SW
ALBANY OR 97321

Dear Mr. Barclay,

Thank you for your letter dated December 20, 2011 regarding state courts using VA compensation in their calculation of spousal support.

While the Oregon Department of Veterans' Affairs finds that you have a compelling argument, we are also aware that there is a 25 year history of case law pertaining to this issue beginning with *Rose v. Rose* in 1987 which was a decision rendered by the United States Supreme Court.

In *Rose v. Rose* the court found that the anti-attachment clause found in Title 38 does not apply to court orders which require a veteran to support his or her family. VA benefits can and should be considered as income when the judge is deciding how much support a spouse or children need and what a veteran is able to pay.

The Illinois Court of Appeals in 2005 held in *In re Marriage of Wojcik* that federal law does not preclude a state court from ordering a veteran to pay court-ordered family support obligations from disability benefits.

The Iowa Court of Appeals held in 1994 in *In re Marriage of Anderson* that "it is clear veterans benefits are not solely for the benefit of the veteran, but for his family as well" in ordering the payment of alimony from the veteran's sole sources of income, disability payments and Supplemental Security Income. That court wrote that the U.S. Supreme Court in *Rose v. Rose* "again and again in its opinion recognized family support as an important exception to the anti-garnishment rule for VA benefits and further recognized family support as child support and alimony."

The Supreme Court of Vermont in the 1987 *Reposh v. Reposh* decision stated that the VA statutes barring attachment of benefits did not apply in a spousal maintenance (alimony) case because a wife seeking support was not a creditor under the statute.

There are cases from Florida (*Allen v. Allen* 1994), Mississippi (*Steiner v. Steiner* 2001), Wisconsin (*In re Marriage of Weberg* 1990) and numerous other states which uphold the power of state courts to use VA benefits as a source of income in determining family support.

Based on the above decisions, the Oregon Dept. of Veterans' Affairs respectfully declines to support you in this endeavor but wishes you every success.

Best regards,


Jim Willis
Director

cc. United Veterans Groups of Oregon

From: Peter Barclay [<mailto:peterbarclay@hotmail.com>]
Sent: Friday, January 13, 2012 2:04 PM
To: 'Hoeft Nicole'
Subject: RE: Policy

I'm including several documents for Mr. Willis. For the rebuttal to the ruling in South Dakota, they say the federal government must enact a positive exclusion based on the Mansell case. That is ridiculously taken out of context as they were talking about legislators doing specifically that. However, in McCarty there was absolutely no exclusion their ruling was based that there was nothing within the retirement program to extend benefits to ex-spouses. All the arguments out there are silly false logic.

38 USC 5301 Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

From: Peter Barclay [<mailto:peterbarclay@hotmail.com>]
Sent: Tuesday, January 24, 2012 8:34 AM
To: Willis Jim
Cc: gary4606@comcast.net; 'Wayne Harvey'; 'Al Herrera'
Subject: RE: Policy

Dear Mr. Willis,

I am deeply saddened the signed statement of you've made to me and the Oregon Supreme Court is that the official position of the ODVA is to fully support the use of VA Compensation in calculation of a spousal support only award. Before speaking with my lawyer, I thought this was some kind of misunderstanding or that it simply meant I am still on my own in this fight. However, unless I receive some kind of correction, the legal process requires my disclosure of this document to the courts and will soon be made a matter of public record. As the Executive Branch de facto authority on all legal issues regarding veterans, this statement to decline support is abundantly clear. Your declination to support my case is a clear message to Chief Justice De Muniz, and will be seen as full support against my case for all the reasons you gave in your letter. I have seen many letters sent directly to the Chief Justice, specifically on my issue from the DOJ and Child Support Enforcement office giving their ridiculous reasons, position and legal opinions why they wish to steal benefits from veterans. They aren't afraid to provide their legal opinion.

I am appalled that not only does your agency refuse to speak up for veterans but you have written a letter that spits in the face of the legal experts at the USDVA. Ms. Hoeft gave me the impression the ODVA just doesn't like to get into these matters by asking me "how many requests do you think we get?", as if your office doesn't have time to respond

to all of them. I would officially like an answer to that question. How many requests do you get on cases specifically to the Oregon Supreme Court? I'm not asking about the circuit courts or even the Oregon Court of Appeals, just the Oregon Supreme Court. Although, I think if your office had possibly taken the time to make at least 1 statement to the Appeals Court, many veterans would not be facing this issue. You probably wouldn't have all the requests for your help on these matters. By not addressing these cases and by your refusal to respond to the legal issue to which you every reason and responsibility to make your legal business, you have caused this problem to exist and persist in our state

I will be responding to your office to request some specific clarifications on some of the legal points made but when the Oregon Supreme Court reads your letter, nothing I do or say will change a thing. I have no doubt in my mind that they will rule in the consistency of both your opinion and that of the Oregon Appeal Court and simply refuse my petition requesting to hear my case. At which point, I will push this to the US Supreme Court. The state of Oregon and because of this letter, specifically you and the ODVA will become a party to the case. The USDVA as a matter of policy, provides a brief to all cases regardless of request to reach the US Supreme Court. They have also made their legal position clear. While they will not submit a brief to a state court, if or when a case reaches the US Supreme Court, they will submit a brief in full support of the veteran. When we get to court, you and your attorneys will be sitting at one table while I and the USDVA will be sitting at the other. You will have to answer why your position in this matter is in conflict with the mandate of your agency and the legal position of the USDVA. I am completely in shock that the ODVA would send out this signed statement when the US Department of Veterans Affairs has consistently stated otherwise. I guess it is true that Oregon is in fact leading the charge nationwide to violate veterans rights. I will be informing the membership of the UVGO of your letter. However, they have specifically requested Ms Nichole Hoeft provide them a response letter. From the unanimous response of the 12 veterans groups at the last UVGO meeting, I am sure you will get plenty of practice responding to questions about your statement before you get to the courts.

Peter Barclay

From: Willis Jim [<mailto:jim.willis@state.or.us>]
Sent: Tuesday, January 24, 2012 11:45 AM
To: 'Peter Barclay'
Subject: Policy

Mr. Barclay,

I am surprised at your email reaction to my letter to you of January 17, 2012. My surprise is based on some conclusions that you have drawn from ODVA's position. First, you say in your letter that we have sent a signed statement to the Oregon Supreme Court. That is untrue. The only persons or organizations that received our letter were you and the members of the United Veterans Groups of Oregon who had also expressed an interest in ODVA's position. Second, your actions are based on a position you would like the court to take based on your

view of the law. As explained in my letter to you, the courts have already made decisions based on the position you have taken.

Because the courts have held that the anti-attachment clause found in Title 38 does not apply to court orders which require a veteran to support his or her family which includes children and or a former spouse, ODVA is simply following the law in saying that we "respectfully decline to support you in this endeavor but wishes you every success." In other words, we are taking a natural position on this issue which in no way removes anyone's ability to appeal their individual cases to any court they choose.

Please understand that when a person or organization takes a position to not support something or someone based on the law, it does not mean that you are entitled to label that person or organization as anti-veteran. The Oregon Department of Veterans' Affairs has a long and proud history of supporting veterans and their issues. We will continue to support that mission both now and in the future.

Best regards,

Jim Willis, Director
Oregon Department of Veterans' Affairs
"Where EVERY DAY is Veterans Day"

From: Peter Barclay [<mailto:peterbarclay@hotmail.com>]
Sent: Tuesday, January 24, 2012 5:08 PM
To: 'Willis Jim'
Cc: 'Kelly Cape'; 'gary4606@comcast.net'; 'Wayne Harvey'; 'Al Herrera'
Subject: RE: Policy

Mr. Willis,

It doesn't matter if you only sent it to me. I am in a legal case with the Oregon Supreme Court and required by law to disclose it. You are a "public rep" not to mention the top VA government Official for the State. Everything you sign, every email at work you send or receive is available through the freedom of information act. Go ask your legal team about that. Do you really think what you signed would ONLY be read by me? Would you like to see a few letters I have written between Congressmen and General Shinseki on this issue. Part of my legal case is based on the internal emails of the Administration of Children and Families as they were creating the CFR's for the Social Security Act. They sure were not addressed to me. They were POSTED on their web site!

Second, this is NOT decided by the courts. Why the hell would I have a case at all? This question has NEVER been answered by the US Supreme Court or the Oregon Supreme Court. And while you mention several cases where the LOWER courts miss-interpreted other courts and the interpretations of lawyers, this is NOT a decided point of law. Did your legal team by chance mention any of the other cases from state courts like Alabama, California, and Virginia (just to name a few) that have agreed with my position? Your

generalized statement that 38 does not apply, is actually, very wrong. You're quoting a "concur in part" opinion of Justice O'Connor, not the consensus ruling presented by Justice Marshall. He delivered the legal ruling of the court and said 5301 was strong enough to protect against claims of the family, even children. It was because of the provisioning statements for children under 5307 which allow apportionment for children. Every little part has to be argued and deconstructed. After this they had to argue if the states had the right to do the act of apportionment. Also, none of this was done until after ensuring through pages and pages of documents they could prove that the payment the vet got consisted of a part for the vet and then the additional part for the dependent child in question. You might also notice in my case, the USDVA doesn't give us an extra amount for "ex-spouses". Which is why Rose doesn't really matter much since they can't fulfill the very first required part to say the USDVA added money to my award for an ex-spouse.

Please don't think of me as bureaucratically unfamiliar with government process. I am exceedingly versed in what happens when you write a letter like you did. But it is obvious you did not understand where this letter would go, much less understand as a "public representative" or as an agency, you do NOT have a right to privacy or to be neutral. By writing a letter giving all the reasons to oppose my case and then "decline" to support me, you are at minimum making the statement, that you will NOT stop or even speak to prevent the courts from doing what they are doing because you agree with the points you made. I think you need to take a look at your legal team. They should have prevented you from signing that letter. Also, did they forget to tell you Chief Justice DeMuniz and I had sat down chat in his office to try to address this administratively without the courts. Both I and his committee sent out a request for your team to respond to him on a form change that would have fixed this in the entire state. But because your legal team refused to give him their opinion and the only agencies that would respond "with their opinions" were the DOJ and CSE he went with that consensus which is why I am now bringing it to court. You are the De Facto legal experts on veteran law. When you are acting as the Director of the ODVA you are a public agency and have no right, authority or legal ability to play a "neutral" position. I suggest you have another talk with your lawyers. You will find every precisely worded sentence in my last email actually carries documented verifiable weight in a court of law regardless if a court might agree.

Just to remind you of one last thing. I am a private citizen and entitled to my opinion. As an American Citizen I am entitled and required to get mad at the elected and hired government officials who don't do things the way I like. While I'm upset about your letter, I'm also upset with Chief Justice De Muniz decision to rely on the consensus of the responders. That does NOT mean I hate the man or do not respect him. I have a tremendous amount of respect for him. I can say the same for you. I just think you've been misguided and misled by your legal team who have put you in a VERY bad situation. I'm trying to explain to you the gravity of the situation and also give you a second chance. Let me repeat what I said in my last email just in case you overlooked it. **"unless I receive some kind of correction"** I am required to disclose it. All I would need is an email from you telling me that you need to reword that letter. One that I can then

forward to my lawyer who is legally bound by law and ethics to disclose your document. One that would give you a chance to properly respond.

Peter Barclay

From: Peter Barclay [<mailto:peterbarclay@hotmail.com>]
Sent: Wednesday, January 25, 2012 11:21 AM
To: 'Peter Barclay'; Willis Jim
Cc: 'Kelly Cape'; gary4606@comcast.net; 'Wayne Harvey'; 'Al Herrera'
Subject: RE: Policy

Mr. Willis,

I have been trying to get one simple answer from you. Forget about the legal case at hand in the courts. That is simply where this issue has landed because the ODVA has failed to do its job in the administrative functions of our state government. Let me make this absolutely and abundantly clear. If ANYONE asks the ODVA its opinion or position on the law on ANY matters regarding veteran law, the ODVA is required to provide it. The ODVA as the Executive Branch agency in charge of all Veteran matters is required to provide the legal position of the law.

If I ask the ODVA what the legal position of the ODVA is for camping fees for the state of Oregon, the ODVA is required to tell me. If I ask the ODVA what the law says about whether or not I'm suppose to have to pay for the reservation fee or not, the ODVA is suppose to know the law and tell me an answer. If I am sitting down with people in another department of the state government who are creating a price sheet for camping and need clarity on these prices and how veterans law effects them, the ODVA is required to provide clarity. Just because the legal matter at hand is controversial does not provide the ODVA the ability to refrain or decline to comment. Now in my past emails to you, I have readily replaced the term "the ODVA" with the term "you" because YOU are the Director of the ODVA. What I have come to believe is you may be ignorant of the failures of the people below you and the those of the agency which you are in charge.

I have been trying to fix this issue outside the courts for 3 years. The ODVA has been failing to respond to public inquiries and even the direct requests of myself and the requests of Chief Justice De Muniz through his UTCR committee to supply the ODVA's interpretation and position on veteran law in this matter. I have 3 years of documented evidence on hand, that your agency has been negligent in its job by failing to respond. I do not use these words lightly. I am including a copy of a standardized court form which is created and managed by the Chief Justice's UTCR committee and approved by him for distribution in every court in the state. The form is the Uniform Support Declaration which provides a matrix used by every judge and used in every case state wide to properly perform a calculation in both cases of child support awards and in spousal support awards. The next document I'm including is the suggested update to the form I

provided where it moves VA Compensation out of being included as income and places it in the calculations next to TANF, Food Stamps, SSI and other similarly protected funds. A few simple changes on pages 1 and 3. There were many documents going through the math on how this works and in any possible case. I went through 2 years of debates and repeated requests from every executive branch office for opinion on different points. It was even released for open public comment. Although the ODVA was requested for comment, the ODVA repeatedly stood silent. All other agencies responded, they even sent people to discuss in person, yet the ODVA did NOTHING. The ODVA has been failing to do their jobs. Personally I think it is possible your legal people are so busy NOT wanting to do their jobs in this matter that they are even convincing you not to do your job.

The ODVA has been requested and is required to provide its position. If the ODVA does not want to take their position on this issue and create a specially tailored response to the legal case currently being petitioned to the Oregon Supreme Court in the form of filing a brief amicus curiae, then the ODVA has every right to decline that request. However, the ODVA is still required to provide its legal opinion and position on the legal ability and proper use of utilizing VA Compensation in the calculation of a spousal support only award. Because of the failures and negligence of the ODVA, I have had to resort to spending thousands of dollars of my own money in an effort to protect veterans and do your job for you. I could have had this solved 2 years ago but now we are where we are. Now, based on all the additional information regarding the failures and negligence of your agency in these matters, I would ask you to tell your people to clean up their mess and provide a brief to the Oregon Supreme Court under these special circumstances. I will also be faxing a copy of this letter as a second official request for an answer to the official position of the ODVA and as a second request for a brief to the courts.

Thank you,
Peter Barclay

From: Willis Jim [<mailto:jim.willis@state.or.us>]
Sent: Wednesday, January 25, 2012 11:32 AM
To: 'Peter Barclay'
Cc: 'Kelly Cape'; gary4606@comcast.net; 'Wayne Harvey'; 'Al Herrera'
Subject: RE: Policy

Mr. Barclay,

Your email to ODVA has been referred to the Department of Justice legal counsel.

Best regards,

Jim Willis, Director
Oregon Department of Veterans' Affairs
"Where EVERY DAY is Veterans Day"

From: Willis Jim [mailto:jim.willis@state.or.us]
Sent: Wednesday, January 25, 2012 11:46 AM
To: 'Peter Barclay'
Subject: RE: Policy

Mr. Barclay,

The Department of Justice is the legal counsel for ODVA. We can and will seek their advice anytime we feel it is necessary. In this case we feel it is necessary.

Best regards,

Jim Willis, Director
Oregon Department of Veterans' Affairs
"Where EVERY DAY is Veterans Day"

From: Peter Barclay [mailto:peterbarclay@hotmail.com]
Sent: Wednesday, January 25, 2012 11:55 AM
To: Willis Jim
Subject: RE: Policy

Mr. Wills,

Thank you very much for clarification on this. I would then like you to take into consideration, I believe there is a conflict in interest in this case. The DOJ is in charge of the CSE and just as it is the ODVA's job to advocate for veterans it is the DOJ's job to advocate an opposing view specific to this matter. Does the ODVA not have in house counsel? Please think about that and let me know if you have any remedies.

Respectfully,
Peter Barclay

From: Peter Barclay [mailto:peterbarclay@hotmail.com]
Sent: Wednesday, January 25, 2012 11:59 AM
To: 'Willis Jim'
Subject: RE: Policy

Mr. Wills,

As a quick after thought, I respectfully recommend you refer or seek the advice of the on staff counsel of the US Department of Veteran's Affairs regarding this matter.

Respectfully,
Peter Barclay

From: Willis Jim [mailto:jim.willis@state.or.us]
Sent: Wednesday, January 25, 2012 12:50 PM
To: 'Peter Barclay'
Subject: Policy

Mr. Barkley,

ODVA is required by law to use the Department of Justice as our legal counsel. The legal counsel afforded to the USDVA is the office of General Counsel and exists to provide legal counsel to the USDVA and not to the states. I hope that is clear. I will await advice from our legal counsel before responding further on this matter.

Best regards,

Jim Willis, Director
Oregon Department of Veterans' Affairs
"Where EVERY DAY is Veterans Day"

From: Peter Barclay [mailto:peterbarclay@hotmail.com]
Sent: Wednesday, January 25, 2012 1:03 PM
To: 'Willis Jim'
Subject: RE: Policy

Mr. Wills,

I would like to take a moment outside of the controversial issue and address a comment you made in an email. I am fully aware of the long and proud history of both the ODVA and yourself in supporting our veterans as well as our Active, Reserve and National Guard troops. I am very grateful for the work which has been accomplished and very appreciative of all of the efforts I know you and the ODVA with work diligently on in the future. I realize you personally are just now coming in on the tail end of a 3 year effort to resolve the issue currently at hand. I understand my passion for this for this issue compounded by the 3 year lack of response from the ODVA may feel like a personal attack on you and the ODVA. Let me assure you, and say directly, I have a lot of respect for both you and the ODVA.

Many of those that oppose my views have accused me of being anti-child support or anti-alimony and even saying it directly. While I have had to provide clarification to those people, you do not need to provide that clarification to me. I do not feel you or the ODVA are anti-veteran and would not label you that way. I can appreciate you may feel many of my comments and letters are aggressive, using extreme language and harsh tones. I hope you can appreciate the absolute need to impress upon you the weight of the situation. I needed to impress upon you what is at stake and how badly our veterans are being abused because of this issue.

I have taken a considerable interest because I was once affected by this issue. I know first hand the devastating effects as the system persisted in taking VA compensation benefits away from my children and me just to give them to someone else. Since then I have repeatedly found cases where this issue was directly responsible for the incarceration, homelessness and even the suicides of veterans over these issues. I appreciate you personally responding to me on this issue. It shows you have understood and fully respect the seriousness of the issue. It shows you are doing everything personally in your power to deal with the issue. So I would like to take this moment to say thank you, regardless of whether or not you are able to respond in a way I would like.

Respectfully,
Peter Barclay

From: Peter Barclay [mailto:peterbarclay@hotmail.com]
Sent: Thursday, February 02, 2012 12:10 PM
To: 'Willis Jim'
Cc: 'Kelly Cape'; 'gary4606@comcast.net'; 'Wayne Harvey'; 'Al Herrera'
Subject: RE: Policy

Mr. Willis,

I don't even know what to say. I could go on with all kinds of angry statements but the fact is, your people have screwed up. It no longer matters what your opinion is. I want answers why the ODVA failed to provide an opinion over the last 2 years. I want to know who told you, you had the ability to be "neutral" on a veteran opinion of law. If you try to tell me it is a decided fact of the courts I'm going to tell you if that were true then why was the Governors equal in the Judicial branch asking for your opinion? When the Chief Justice of the Oregon Supreme Court has requests sent to the Executive Branch asking for their opinions, I really doubt you can fall back on that. I will now be headed to DC to fix what your Department failed to do. I'd like an official answer to that question now.

Who in the ODVA screwed up by not providing opinion to the chief justice back in ?
Who told you, you had the ability to be neutral on Veteran Law while you are the state experts?

Who told you that when you are acting as a representative of the ODVA provides you some kind of privacy to submit a letter without it being available to the public?

I'm sure there are going to be a lot more questions to answer. I suggest you start looking into your people to find out who messed up.

Peter Barclay

From: Peter Barclay [mailto:peterbarclay@hotmail.com]
Sent: Wednesday, February 08, 2012 12:55 PM
To: 'Willis Jim'
Cc: 'Kelly Cape'; 'gary4606@comcast.net'; 'Wayne Harvey'; 'Al Herrera'
Subject: RE: Policy

Mr. Willis,

I am still waiting for a response from your office regarding the signed statement you provided on the opinion of the ODVA in the matter of courts using VA compensation for a spousal support award. Please forward this email to the representatives at the DOJ reviewing this question. I would like to remind you while your emails tell me you wanted to stay "neutral" you do not have that luxury as the Executive Branch experts in Veteran law. Your letter is also anything but neutral in nature. I would like to understand how when you said "can and should" I am suppose to have the impression you wished to be neutral on this issue. These three words alone show your full support of the unlawful attachment of veteran benefits. Please make sure your response fully explains this entire paragraph in your letter. Your letter says:

"In Rose v Rose the court found that the anti-attachment clause found in Title 38 does not apply to court orders which require a veteran to support his or her family. VA benefits can and should be considered as income when a judge is deciding how much support a spouse or children need and what a veteran is able to pay."

This statement is a declaration that the ODVA supports the unlawful attachment of benefits. It also uses a false interpretation of the case of Rose v Rose as justification. Your interpretation of Rose v Rose is in every way wrong. In this case the court first identified "Family". In our laws we define the family financial responsibility of a person to another by using the word "Dependent". In each area of the law there are different qualifications for that financial requirement for dependents. In each area of law authorized family are defined and determined to be "Eligible Dependents". My niece living with me full time may qualify as my eligible dependent under tax laws or for social services when applying for food stamps. However, she does not qualify under Military, Veteran or Social Security programs as an eligible dependant. If the children in the case of Rose v. Rose were shown to have gone through the legal process of emancipation or adoption by another party to remove them from the veterans family, they would not have been held under the legal definitions of eligible dependents.

In the case of Rose v. Rose the children were shown to be eligible dependents of the veteran. The veteran stated he was receiving a benefits based on the publically provided VA Compensation rate table. The veteran said he was receiving an amount for himself and an additional amount for each of the children in this case. It was also shown this was being paid as a single combined payment to the veteran. The payment provided to THIS veteran and in THIS case could therefore only be defined as a payments for the intent and benefit of the veteran and his children.

The court then needed to determine if the US had superseding authority in this matter. To this point both the Tennessee Court of Appeals and the US Supreme Court agreed the US

Federal government *would* have superseding authority in this matter **IF** a conflict occurred.

Page 481 U. S. 625

"The Court of Appeals correctly identified the constitutional standard for determining whether § 36-820, as construed by the Tennessee courts to authorize an award of a veteran's disability benefits as child support, conflicts with federal law, and is therefore preempted under the Supremacy Clause."

The US Supreme Court held that by itself, 38 USC 5301 was strong enough to protect against any claims including those of the family. While many people love to quote the opinion of Justices O'Connor and Stevens, I remind you that opinion was specifically stated to concur with the ruling but dissent against the reasoning. This opinion is NOT the opinion of the court, the consensus of the justices or a part of the final ruling delivered by Justice Marshall. The court then needed to determine if a conflict actually existed. This is the exact point of law you need to understand here. Under 38 USC 5301 is the law 5307 which provides that a payment made to a veteran for them and their eligible dependents may be apportioned if the dependents are living separately from the veteran. The exact point of law of the case of Rose v. Rose is there was NO CONFLICT in the law because the states were performing provisioning statements of 38 USC 5307.

This matter was even further argued by the veteran that the Veterans Administration was the only authority authorized to perform the actions under 5307. The court found that there was nothing within the law which held the VA had sole authority to perform an apportionment. While the VA would have had superseding authority to perform the apportionment, because they were not doing so, the states had the "deep moral" responsibility to perform the apportionment. In simple terms, in lieu of the VA performing the apportionments the responsibility to perform the apportionment calculation in this case fell on the shoulders of state courts. The states had the right to perform the act of apportionment for eligible dependents in this case and all previous cases where the VA was not performing an apportionment.

Now we can argue about child support all day but my case and the question at hand has nothing to do with child support. Unfortunately in the cases like Mansell v. Mansell and Rose v. Rose the court was very clear they would only be addressing the exact question at hand and not any question outside of that. That said, this does not mean the court either supports or does not support either side to these additional legal questions. To assume they did not comment as an affirmation of one side of the other would be to demonstrate one's personal bias in the situation. Many courts including Oregon have shown this bias against veterans by saying the court only provided protection for waived funds and since they did not comment outside of that question they assume that is where the protection ends.

In the case of Spousal Support the spouse has gone through the legal process to remove themselves as an eligible dependent and the veterans benefits are immediately reduced upon a divorce/annulment/dissolution. Ex-spouses are not included as eligible dependents nor are they given provisions under 38 USC 5307. To this point I am including a copy of my "Benefits Summary" from the VA. No where in this document does it say these

benefits are intended for my ex-spouse Claudia. On the contrary the US Department of Veterans Affairs clearly states:

*"These benefits are intended for the veteran, his **current** spouse, Christine and child, Liliana."*

By supporting the unlawful attachment of my benefits for my ex-spouse the ODVA is supporting not only the unlawful attachment of my benefits as the veteran but the attachment of the benefits for my current wife and child. I would appreciate an update as to the status and timing of your response.

Respectfully,
Peter Barclay