

Legal Lines

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PRESIDENT'S MESSAGE

By Robert S. White

Hello fellow members of the Worcester County Bar Association. As I follow up on my message of only a month ago, it actually feels more like a year since I wrote. Is time moving like that for you? Does it seem like forever since you shook someone's hand, sat in a restaurant or went on a trip? This is an unprecedented experience for me and, I suspect, for all of you.

It's a novel challenge for all of us to follow the advice of our local political leaders and just stay home. Like many of you, I am starting my fourth week of working remotely and social distancing. All the while, I've been trying to maintain a productive legal practice, service my clients' needs, and to keep up my morale. Frankly it's exhausting.

Does this sound familiar? I believe we are all in the same situation.

Thankfully, the Worcester County Bar Association has been working very hard to support and engage its members with information on its website and through its programs. We have been inundated by emergency orders and standing orders. We have been applying for PPP loans and grants. We have been trying to stay current. If you haven't gone there already, please check the WCBA website for the Covid-19 resources page that our staff has tirelessly been updating.

The WCBA has also started to conduct webinars for its members, mostly using the Zoom platform (the song from the childhood show on PBS plays in my mind every time I refer to the videoconferencing platform.) Last week, we held a webinar on "The Practice of Mindfulness," led by Brenda Fingold, Certified MBSR and assistant professor at the Brown University School of Public Health. It was outstanding. I highly encourage you to download the program materials from the member section of our website. There are also links to additional mindfulness programs, live and recorded.

We have many more webinars planned. This week, we scheduled two seminars, "The Economic Fallout of Covid-19", on April 22, 2020, (moderated by Leonardo "Billy Crystal" Angiulo) and "The Worcester County District Court Conference on Court Updates during the Covid-19 Crisis", on April 23, 2020 at 1:00pm, presented by the Honorable Jennifer L. Ginsburg, Honorable David Despotopoulos, Regional Administrative Judge and presiding judge in Worcester District Court, and Brian D'Andrea, Worcester District Court Clerk Magistrate."

Next week, Monica Passeno and John Goggins, chairs of the Bench/Bar Committee: Housing Court Division have arranged for the "Frequently Asked Questions in the Central Housing Court During Covid-19, on April 28, 2020 at 10:00 a.m., presented by Diana H. Horan, First Justice, Central Housing Court and Nickolas Moudios, Clerk Magistrate, Central Housing Court. Maria Joseph and Fran Russell, chairs of the Alternative Dispute Resolution Section will present a seminar entitled "Managing Expectations in Domestic Relations Mediation" on April 29, 2020 from 1:00pm to 2:30pm. Also, as part of the WCBA's Practical Skills series, President-Elect Terry McLaughlin and Executive Committee member Cassandra Arriaza have arranged a seminar on taking depositions remotely, scheduled on April 30, 2020 at 1:00pm.

The current crisis is allowing us to learn new skills and presentation methods that we otherwise would not have focused on, which will help the WCBA serve more of its members, especially those who are not geographically convenient to the Worcester County Courthouse. Though we have primarily used the Zoom platform, we have done our best to use its increasingly improved security features to avoid unwelcome attendees at our seminars. This is the reason the link for the seminars is on the member section of the WCBA website. Please use care in sharing those links and please never post them on social media.

We are all doing our best to get through this pandemic, and we will succeed. For now, we will live in our socially distant world and have our "Virtual" social gatherings like the one sponsored last week by the Young Lawyers Section. Someday, hopefully sooner rather than later, we will be able to resume some semblance of normalcy, and I believe that we will appreciate what is around us all the more. Finally, I wish to express my sincere condolences to those members of our organization that have lost loved ones the Covid-19 virus.

Worcester County Bar Association – Family Law/Domestic Relations Section

Case Summary: Stacy v. Stacy, 97 Mass. App. Ct. 160 (2020)

By Kevin J. Powers¹

Submitted on behalf of the WCBA Family Law/Domestic Relations Section

I. Issue

Under G.L. c. 208, § 34, does 38 U.S.C. § 5301(a)(1) pre-empt a Massachusetts court from dividing a spouse's Federal veteran's disability benefits as part of the marital estate, in connection with equitable distribution of the estate upon divorce?

II. Facts

Prior to the marriage, the Husband suffered an injury while on active duty with the United States Navy. During the marriage, the Husband filed a disability claim with the United States Department of Veterans Affairs (VA). The VA ultimately sent VA disability benefits to the Husband and deposited lump sum payments, representing both retroactive VA disability benefits and a retroactive additional spousal benefit, into the Husband's personal bank account. The final deposit followed the Wife's divorce filing by two months.

III. Procedural History

In a divorce proceeding, the Probate and Family Court awarded the Wife one-half of the Husband's personal bank account containing a retroactive, lump sum veteran's disability payment from the VA. The Husband appealed.

IV. Rule of Law

Federal law pre-empts Massachusetts courts from treating veteran's disability payments as marital property subject to equitable distribution; 38 U.S.C. § 5301(a)(1) prohibits "attachment, levy, or seizure" by "any legal or equitable process whatsoever," and an order requiring division of veteran's benefits is "legal or equitable process." Further, 38 U.S.C. § 5301(a)(1) applies to "[p]ayments of benefits ... made," "either before or after receipt by the beneficiary"; therefore, benefits do not lose their protection from state court process solely because they have already been paid to a divorcing spouse.

Although 38 U.S.C. § 5301 does not prohibit the Probate and Family Court from considering a spouse's receipt of VA disability benefits as a relevant factor under G.L. c. 208, § 34 when determining how to divide the marital estate, the Probate and Family Court may not mechanically offset the distributions dollar-for-dollar to account for the VA disability award. Such would constitute an improper end-run around 38 U.S.C. § 5301(a)(1).

V. Policy

Per the United States Supreme Court in Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979), state domestic relations laws are preempted where states have applied their domestic relations laws to order Federal benefits redistributed to former spouses upon divorce. In Hisquierdo and Wissner v. Wissner, 338 U.S. 655 (1950), the Supreme Court held that pre-emption applied to state property division laws but not necessarily to state support laws. Sections of 38 U.S.C. that allocate additional compensation for the support of a disabled veteran's spouse expressly provide that the additional compensation is an entitlement of the veteran, rather than an entitlement of the veteran's spouse. Further, the spousal benefit terminates upon divorce. These sections indicate that the additional compensation to the veteran for the veteran's dependents is an entitlement of the veteran, not of the veteran's spouse.

The vast majority of state courts that have addressed the issue have likewise held that VA disability benefits are not subject to property division during state divorce proceedings.

VI. Reasoning

Justice Englander, writing for the Court and reviewing the decision of the trial judge *de novo*, observed that the VA disability payments in this case were deposited in the Husband's individual bank account and remained readily available to the Husband, retained the qualities of moneys, and were not converted into permanent investments.

VII. Holding

The VA disability funds in the Husband's personal account were exempt from division under G.L. c. 208, § 34, by virtue of 38 U.S.C. 5301(a)(1).

VIII. Disposition

The Appeals Court therefore vacated the portion of the amended divorce judgment pertaining to property division and remanded for further proceedings.

¹ The author handles appeals and complex trial motions for busy trial lawyers who love going into court but who lack the time to decamp to a law library. He can be reached at kpowers@kevinpowerslaw.com.