

RESOLUTION OPPOSING  
PENSION LEGISLATION EXCLUDING DISABILITY PAY FROM PROPERTY AND  
SUPPORT CASES

Adopted by the American Academy of Matrimonial Lawyers  
at its meeting on November 8, 2015

WHEREAS, the American Academy of Matrimonial Lawyers (AAML) is an organization of highly regarded domestic relations attorneys the mission of which is “To provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law,” and consists of highly skilled negotiators and litigators who represent individuals in all facets of family law; and

WHEREAS the AAML provides leadership and guidance in family law policy matters assisting states in evaluating, passing, and enforcing just laws for the support of families and the distribution of marital and community property; and

WHEREAS, the AAML has several times reaffirmed its position that state divorce court judges should have the authority to divide all marital or community property between the parties to a marriage, to award spousal support as necessary to do equity to the parties to a marriage, and to provide child support adequate to support of children; and

WHEREAS, AAML positions have specifically addressed military retirement benefits and military-related divorce matters, including a detailed position papers submitted to Congress in 2001 and 2010 regarding the Uniformed Services Former Spouses Protection Act and related issues, in favor of distribution of all retirement benefits earned during marriage and state sovereignty over custody and visitation law; and,

WHEREAS, property division and support laws should apply to all parties fairly and equally, holding no class of citizens above any other, and avoiding preference for any special class of persons as to equal protection of the law; and

WHEREAS, state divorce laws should recognize and account for all benefits and property earned or acquired during a marriage to avoid unjustly enriching or wrongly depriving parties of property and earnings of, or with, benefits earned during marriage; and,

WHEREAS, the election of disability payments from the U.S. Department of Veterans Affairs (VA disability compensation) or the Department of Defense (Combat-Related Special Compensation) can effect a reduction in the share of a military pension that is awarded to a former spouse, often without the knowledge or consent of that former spouse; and

WHEREAS, state divorce courts generally take into consideration all separate property income streams when determining the financial resources available to the parties to a divorce case, and do and should indemnify parties from any post-divorce recharacterization of assets distributed upon divorce that would have the effect of removing payments from a party to whom those payments have been awarded; and

WHEREAS, the majority of state courts take into consideration such disability payments in determining child and spousal support; and

WHEREAS, the majority of state courts allow or require indemnification of the former spouse when a military retiree elects VA disability compensation and that election reduces the former spouse's share of the military pension; and

WHEREAS, the majority of state courts that have ruled on the subject allow or require indemnification when a military retiree elects Combat-Related Special Compensation and that election reduces the former spouse's share of the military pension; and

WHEREAS, single-issue activists are now targeting state legislatures to try to block judges from considering such disability payments in calculating spousal support or child support and divisions of property, and to prevent courts from indemnifying former spouses from post-divorce recharacterization of benefits by the pension-earning spouses; and

WHEREAS such attempts have been successful in Arizona in 2011 (§ 25-530) and in Wyoming in 2013 (SF0046), but defeated in every other jurisdiction in which it has been raised, and every known jurisdiction in which there has been an open, publicized review of such proposals and their actual effects,

NOW, THEREFORE, IT IS RESOLVED that the American Academy of Matrimonial Lawyers urges state legislatures to reject any bill attempting to deny divorce courts the ability to consider all separate property income streams – including VA disability compensation and Combat-Related Special Compensation – in determining the actual assets, income, and expenses of the parties when distributing the marital estate, and in setting spousal support and child support; and,

IT IS FURTHER RESOLVED that the American Academy of Matrimonial Lawyers urges the legislatures of each State to reject any proposal that would prevent State divorce courts from protecting their decrees from the potentially damaging effects of a post-divorce recharacterization of retired pay, and protecting the parties in divorce cases from having the pension payments awarded to them reduced or eliminated through the election of disability pay by the other party.

Adopted by the American Academy of Matrimonial Lawyers this 21<sup>st</sup> day of September, 2013.