

PARSONS DUE PROCESS AFFIDAVIT (PDPA)

(PRE-APPORTIONMENT)

READ THIS FIRST!

Group member Mike DV DRACO Lavigne submits that this page should answer many questions you may have about filling out the MS Word Template of the PDPA:

This version is the Pre-Apportionment PDPA for those disabled vets who have a child support order but no properly submitted VA Apportionment Claim yet filed by the state Title IV-D Agency. If you receive Social Security Disability Insurance benefits, That language can be added by copy & paste technique from the Pre-Divorce PDPA Sample

Read every word and change to your personal situation!

If the text is in black, do not change it!

If the text is in red change it to your situation, state laws, and forms. Texas sample is provided below.

The legal heading above the title "DUE PROCESS AFFIDAVIT" must reflect your court.

If text is in blue, make sure you attach noted documents, letters, etc. (Change back to black before printing)

This instruction page is not to be printed with your finished PDPA. Make sure your page numbers align properly at the bottom of the page before printing.

There is even more info on Due Process for you to study in my Disabled Vet Child Support Info Facebook group. Send request to join after opening the link at:

[Veteran Child Support Group](#) [Control + Click to open link]

LT(j.g.) Greg Parsons U.S. Navy, PDRL

DON'T PRINT OR ATTACH THIS PAGE!

[THE ENTIRE LEGAL HEADING IN RED HERE IS TO LOOK LIKE YOUR CHILD SUPPORT ORDER]

CAUSE NUMBER 10-F#####

IN THE INTEREST OF § IN THE 166TH JUDICIAL DISTRICT
JANE DOE § OF
A CHILD § SMITH COUNTY, TEXAS

Brought to you by the [Disabled Vet Child Support Info Group](#)

Authored by LT(j.g.) Greg Parsons U.S. Navy, PDRL

DUE PROCESS AFFIDAVIT

THE STATE OF TEXAS

COUNTY OF SMITH

BEFORE ME, the undersigned authority, on this day personally appeared

JOHN DOE, who

swore or affirmed to tell truth, and stated as follows:

"My name is JOHN DOE.

I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts written in this statement. I understand that if I lie in this statement I may be held criminally responsible. This statement is true.

1. **45 Code of Federal Regulations § 302.56** provides guidelines for setting child support awards. Pursuant to paragraph (f), the State of Texas must provide me a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the Texas Family Code guidelines established in **§ 154.062(b)(5) (Amended by Acts 2013, 83rd Leg., R.S., Ch. 1046 (H.B. 3017), Sec. 1, eff. September 1, 2013.)** for both setting and modifying child support award amounts is the correct amount to be awarded. (If applicable in your state) ... I have also attached my completed [Challenge to Constitutionality of a State Statute Form](#) (found at

<http://www.txcourts.gov/media/687731/constitutionality.pdf>) prefaced with my *Civil Case Information Sheet* (Exhibit A-#) for **Declaratory Judgment**. My subsequent assertions listed below that rebut **TFC § 154.062(b)(5)** shall state the amount of support that would have been required, beginning [date of your or original order or decree here], under appropriate & just procedural due process guidelines and include the required justification proof:

2. I am a former **U.S. Army PFC** who served his country honorably for **almost three** years as evidenced by my **DD-214** (Exhibit A-#). Pursuant to 38 CFR 3.750(a) "Definition of military retired pay. For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces". I was unable to serve the required 20 year minimum to qualify for military retired pay. By definition, I do not waive a portion of military retired pay in order to receive my Department of Veterans Affairs (VA) service-connected disability compensation benefit award. I am a **100%** disabled veteran since **February 2007**, as evidenced in my latest **redacted VA Summary of Benefits** letter in accordance with 38 CFR 1.511 (Exhibit A-#). Therefore, as legally defined in **10 U.S.C. § 1408(a)(4)(B)**, my Title 38 disposable retired pay is \$0.00 for compliance with any child support consideration by the State of **Texas** and does show a congressional intent to exempt such benefits from a contentious legal process outside the exclusive jurisdiction of the VA courts established in the **Veteran Judicial Review Act of 1988**. Also, **5 CFR 581.103(c)(7)** prohibits the State of **Texas** from garnishing my VA disability compensation benefits award.

3. Barred consent is further confirmed in **DD Form 2293, APPLICATION FOR FORMER SPOUSE PAYMENTS FROM RETIRED PAY**: "I request payment of: ... (2) Child support in the amount of \$ _____ per month." "INSTRUCTIONS FOR COMPLETION OF DD FORM 2293 - GENERAL. These instructions govern an application for direct payment from retired pay of a Uniformed Service member in response to court ordered division of property, CHILD SUPPORT, or ALIMONY, under the authority of 10 USC 1408." ... "I hereby acknowledge that any payment from me must be paid from disposable retired pay as defined by the statute and implementing regulations." ... "IMPORTANT NOTE: Making a false statement or claim against the United States Government is punishable. The penalty for willfully making a

false claim or false statement is a maximum fine of \$10,000 or maximum imprisonment of 5 years or both (**18 USC 287 and 1001**)." (emphasis added)

4. **42 U.S.C. § 659(a) & (h)(1)(B)(iii)** bars consent of the United States to income withholding, garnishment, and similar proceedings for enforcement of child support obligations by the State of **Texas** with any of my service-connected disability compensation benefit award provisioned by the Secretary of the Department of Veterans Affairs since I do not nor have I ever waived a portion of military retired pay in order to receive such.

5. **5 C.F.R. §§ 581.102 & 581.401** as well as **15 U.S.C. §§ 1672 & 1673** establishes that the "**aggregate disposable earnings**", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Federal **Consumer Credit Protection Act** for child support, are the obligor's remuneration for employment. ***Black's Law Dictionary*** 1322 (8th ed. 2004) defines "remuneration" as "[p]ayment; compensation" and "employment" as "work for which one has been hired and is being paid," id. 545; see also id. at 1180, "personal service" as "an economic service ... involving personal effort of an individual". Therefore, reading **15 U.S.C. §§ 1672 and 1673** and **42 U.S.C. § 659** in tandem indicates that because my VA disability benefits award is not premised upon remuneration for employment, it is not "compensation paid or payable for personal services" and so does not count toward my aggregate disposable earnings. My VA award is legally defined to be "**not remuneration for employment**".

6. **26 U.S.C. § 104(b)(2)(D)** also codifies my VA disability COMPENSATION as "**not gross income**". Attached as **Exhibit A-#** is a recent certified *copy of my Statement & Earnings Query* acquired from the Social Security Administration. I have also attached my notarized *Affidavit of Indigency (Exhibit A-#)* for a decision by the Court. (**Texas form located at http://texaslawhelp.org/files/685E99A9-A3EB-6584-CA74-137E0474AE2C/attachments/D206E45D-9084-474B-9EEE-481A807FBC9B/aff_indigency_final.pdf**)

ROSE V. ROSE, 481 U. S. 619 (1987) - REBUTTAL

7. From the U.S. Supreme Court ruling of ROSE V. ROSE, 481 U. S. 619 (1987), the late Associate Justice Antonin Scalia, concurring in part and concurring in the judgment, writes "I would not reach the question whether the State may enter a support order that conflict with an apportionment ruling made by the Administrator [now Secretary of the Department of Veterans Affairs], or whether the Administrator may make an apportionment ruling that conflicts with a support order entered by the State. Ante, at 627. Those questions are not before us, since the Administrator has made no such ruling." ... "I am not persuaded that if the Administrator makes an apportionment ruling, a state court may enter a conflicting child support order. It would be extraordinary to hold that a federal officer's authorized allocation of federally granted funds between two claimants can be overridden by a state official." Page 481 U.S. 641

8. Justice Scalia continues, "I also disagree with the Court's construction of 38 U.S.C. 211(a), which provides that '[d]ecisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents . . . shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.' The Court finds this [§ 211] inapplicable because it does not explicitly exclude state-court jurisdiction, as it does federal; ante, at 629." Ibid.

9. "Had the Administrator granted or denied an application to apportion benefits, state court action providing a contrary disposition would arguably conflict with the language of § 211 making his decisions 'final and conclusive' -- and, if so, would, in my view, be preempted, regardless of the Court's perception that it does not conflict with the 'purposes' of § 211. But there is absolutely no need to pronounce upon that issue here. Because the Administrator can make an apportionment only upon receipt of a claim, Veterans' Administration Manual M21-1, ch. 26, § 26.01 (Aug. 1, 1979), and because no claim for apportionment of the benefits at issue here has ever been filed, the Administrator has made no 'decision' to which finality and conclusiveness can attach." ... "The Court again expresses views on a significant issue that is not presented." Page 642

10. It is very remarkable here that immediately following the noted Rose deficiencies, Congress passed the previously noted Veterans Judicial Review Act of 1988 in order to grant exclusive jurisdiction of the VA Apportionment Claim process within the newly created veteran court system. § 211 was repealed and Congress subsequently codified § 511 in 1991 to overcome the noted and lacking exclusivity language. **§ 511 now EXPLICITLY EXCLUDES state-court jurisdiction.**

11. Most noteworthy, **38 U.S.C. § 511 is the Decisions of the Secretary; finality**, and such decisions lie solely with the Secretary of the Department of Veterans Affairs, not the State of **Texas**. Section 511(a) was signed into the U.S. Code four years after the Rose decision. Pursuant to the Secretary's authority in **38 U.S.C. §§ 511(a) & 5307** and **38 CFR Sections 3.450-3.458**, "The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or **the dependents** ... of veterans." ... "**the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.**" (emphasis added)

12. Another noteworthy shortcoming discussed in the Rose case; "the implementing regulations, which simply authorize apportionment if 'the veteran is not reasonably discharging his or her [child support] responsibility . . . ,' contain few guidelines for apportionment, and no specific procedures for bringing claims." Page 481 U.S. 619 And continuing, "it seems certain that Congress would have been more explicit had it meant the VA's apportionment power to displace state court authority." Pages 619-620

13. Those sparse guidelines were resolved in 1998 when Federal Commissioner for the Office of Child Support Enforcement (OCSE), David Gray Ross, published Information Memorandum IM-98-03, with Congressional oversight, to every state and commonwealth Title IV-D Agency. **IM-98-03** is entitled ***Financial Support for Children from Benefits Paid by Veterans Affairs*** and is a Federal OCSE policy directive that now instructs the **Texas OAG - Child Support Division** on how to properly submit a claim for apportionment to the Department of Veterans Affairs for those **Texas** veterans whose benefits are legally defined, during due process, as "**not remuneration for employment**". Four specific instructions for proper

submission of a VA Apportionment claim, **VA FORM 21-0788 INFORMATION REGARDING APPORTIONMENT OF BENEFICIARY'S AWARD**, by the State of **Texas** are now to be followed:

1. The IV-D agency (state child support enforcement office) should write the Department of Veterans Affairs using agency letterhead to request an apportionment review. The letter should be signed by both the appropriate IV-D official and the custodial parent. The letter should be addressed to the VA Regional Office servicing that veteran's benefits. Use the toll free number to determine which regional VA office is appropriate (1-800-827-1000).

2. Complete and attach VA Form 21-4138 "Statement in Support of Claim." The normal VA procedure is to request this after receiving an apportionment application, so time can be saved by doing this as part of the first step. This is where information regarding income and net worth may be provided.

3. **Attach a copy of the current support order**, to assist VA in the development of the apportionment award.

4. **Attach a copy of the arrearage determination sheet**, payment ledger, payment records, etc.

14. Pursuant to **38 CFR 3.458**, Veteran's benefits will not be apportioned: (g) "If there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for an apportioned share is filed in their behalf."

15. What's more and from 1997, the **VA Office of General Counsel Precedent Opinion 4-97** holds that a regional office must not consider a state court support order as an apportionment claim. Additional findings of OGC 4-97, "11. Pursuant to 38 U.S.C. § 7104(a), the Board has jurisdiction to review '[a]ll questions in a matter which under section 511(a) of this title is subject to decision by the Secretary.' Section 511(a) authorizes the Secretary to 'decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans.' See also 38 C.F.R. § 20.101(a) (Board's jurisdiction extends to review of all decisions 'under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors.'). Thus, the Board's appellate jurisdiction is generally coextensive with the Secretary's authority under 38 U.S.C. § 511(a) to render initial decisions." [Exhibit A-#](#) is the [October 12, 2016 VA inquiry response letter](#) that further supports, "*Neither the State nor the Division of Child Support Services has authority to enforce child support on a Veteran's disability compensation....*"

16. Since the 1987 Rose decision, U.S. Congress has actively legislated to preclude both the state and its officials from overriding Apportionment rulings between family claimants. However, this is now my instant case question presented to the State of **Texas**, in affidavit form, that must be answered without disregard and contempt of presented post 1987 federal laws, regulations, directives and high court rulings.

17. It must be reiterated here that the Rose v. Rose SCOTUS ruling was based upon the fact that disabled veteran Charlie Wayne Rose was never afforded a proper VA Apportionment claim review. "Those questions are not before us, since the Administrator has made no such ruling." A VA Apportionment Claim ruling was never before the 1987 Court! **However, in my evidence and assertions before you, I have not yet properly been afforded my VA Apportionment claim review pursuant to IM-98-03.**

18. **38 U.S.C. § 5301** is the *Nonassignability and Exempt Status of Benefits*. My VA service connected disability benefits award is protected by **38 U.S.C. § 5301**. **38 U.S.C. § 5301(a)** states that: "(1) 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."

19. From the **VA Office of General Counsel, Precedent Opinion 2-2002** Nonassignability of Benefits—38 U.S.C. § 5301(a) Citation:

"4. An ASSIGNMENT is a transfer of property or some other right from one person to another that confers a complete and present right to the assignee in the subject matter of the assignment. 6 Am. Jur. 2d Assignments § 1 (1999); see also Black's Law Dictionary 115 (7th ed. 1999) (transfer of rights or property). The term 'assignment' ordinarily refers to a transfer of intangible rights in property, as opposed to transfer of property itself, 6 Am. Jur. 2d Assignments § 1 (1999), i.e., a transfer of a right to receive payments, rather than a transfer of the funds themselves. An assignment is by its nature a voluntary transfer. 6 Am. Jur. 2d Assignments § 2 (1999)."

20. "(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an

agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an ASSIGNMENT and IS PROHIBITED."

21. "(3)(C) Any AGREEMENT or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also PROHIBITED and is VOID from its inception." (emphasis added)

22. **31 CFR Part 212 Final Rule June 2013** is the Garnishment of Accounts Containing Federal Benefits. My service connected VA disability compensation benefits award is such a protected federal benefit. The preamble of the Final Rule directs me to cite, invoke, and assert the protections of 38 U.S.C. § 5301(a):

...federal payments subject to garnishment by child support enforcement agencies under 42 U.S.C. 659 are limited to payments based on remuneration for employment. This does not include VA payments other than those representing compensation for a service-connected disability paid to a former member of the Armed Forces who is in receipt of retired or retainer pay and who has waived a portion of the retired or retainer pay in order to receive such compensation...

We note that an individual who receives VA payments can still challenge in court the garnishment of those payments for child support obligations and assert the protections of 38 U.S.C. § 5301(a) in the event a State child support enforcement agency serves a garnishment order on a financial institution.

23. In addition to previously cited federal civil rights, my current child support calculation must not take into consideration any of my VA award as this would violate numerous potential **18 U.S. Code violations, including Sections 241, 246, 249(a)(2), 371, 641, & 666**. There are indications from the [attached January 29, 2015 joint Department of Justice and U.S. Department of Health and Human Services letter \(Exhibit A-#\)](#) that I have also been similarly discriminated against contrary to my rights granted me in the **Americans with Disabilities Act**.

24. **15 U.S.C. § 1681** establishes accuracy and fairness of credit reporting known formally as the Fair Credit Reporting Act. Section 1681n is the Civil liability for willful noncompliance and Section 1681o is the Civil liability for negligent noncompliance of this Act. Section 1681p states "An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy..." (if applicable in your case...) Exhibit A-# is a copy of my latest credit report showing my child support Adverse Account.

25. National Security implications are well indicated in my current and previous child support orders and as discussed in *McCarty v. McCarty, 453 U.S. 210 (1981)*. The refusal of a Texas court judge to accept higher federal court rulings on the limitations of their jurisdiction in matters of National Security can be seen as a treasonous act under the color of law. For in doing so, such disregard of federal laws and regulations interferes with the current Congressional veterans disability benefit scheme which serves as an important inducement for the nation's voluntary military service structure.

26. **18 U.S.C. Section 2381** - Treason must be noted in examining the engrossed language found in **§ 154.062(b)(5)** of the **Texas Family Code**. It totally disregards any procedural due process rights each Texas disabled veteran must be granted in every judicial or administrative child support proceeding.

27. Pursuant to **5 C.F.R. § 581.401**, my true "aggregate disposable earnings" are not to include my VA benefits award, for demonstrated lack of subject-matter jurisdiction by the family court, in both establishment or assignment in any legal process.

28. Furthermore, pursuant to **45 CFR 302.56(g)**, I refuse to pay any child support from my VA benefits award until the Title IV-D Agency follows all the federal laws, regulations, and policy directives as contracted with the Federal Office of Child Support Enforcement and monitored by the Region **VI Dallas, Texas** office. **Waco** VA Regional Office will make an authorized ruling in accordance with the Veterans Judicial Review Act of 1988 on any state alleged arrears based upon the child support order(s) following a proper apportionment

application submission by the Title IV-D agency. The only jurisdiction for an appeal of the VA Apportionment ruling will be **Board of Veterans' Appeal** as stated in **VA Form 4107c**. Both the Secretary of Health & Human Services and the Director of the **Dallas** Region **VI** OCSE will receive a copy of this notarized affidavit, a copy of the [attached March 2016 Dear Colleague Letter](#) issued by DoJ ([Exhibit A-#](#)) along with a notification of the **Texas** Title IV-D Agency's refusal to follow proper legal procedures regarding this disabled veteran's federal civil rights.

29. From *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1016 (9th Cir. 2012), "We conclude that we lack jurisdiction to afford such relief because Congress, in its discretion, has elected to place judicial review of claims relate to the provision of veterans' benefits beyond our reach and within the exclusive purview of the United States Court of Appeals for Veterans Claims and the Court of Appeals for the Federal Circuit... Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.' Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868) ... we conclude that granting VCS its requested relief would transform the adjudication of veterans' benefits into a contentious, adversarial system--a system that Congress has actively legislated to preclude. See *Walters v. Nat' Assn. of Radiation Survivors*, 473 U.S. 305, 323-24, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985). The Due Process Clause does not demand such a system."

30. *Anestis v. United States*, No. 13-6062, 8 (6th Cir. 2014), "In 2012, the Ninth Circuit synthesized the case law and concluded that '[38 U.S.C.] § 511 precludes jurisdiction over a claim if it requires the district court to review "VA decisions that relate to benefits decisions," including "any decision made by the Secretary in the course of making benefits determinations.'"

31. *Rankin v. Howard*, No. 78-3216. 633 F.2d 844 (9th Cir.1980) "...when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. See *Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351 ('when the want of jurisdiction is known to the judge, no excuse is permissible'); *Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir.1980) (Stump is consistent with the view that 'a clearly

inordinate exercise of unconferrred jurisdiction by a judge-one so crass as to establish that he embarked on it either knowingly or recklessly-subjects him to personal liability')."

32. Because the State of **Texas** substantive due process has totally disregarded my federal procedural due process rights denying me Equal Protection Under the Law as asserted in this affidavit, I now demand that my current 'unjust' child support order utilizing my Title 38 benefits award in establishment be rendered **void ab initio** pursuant to **38 U.S.C. § 5301(a) (3)(C)** 'Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.' Until the State of **Texas** considers a 'just' and 'appropriate' child support order calculation with my VA award, I will be blatantly denied both unfettered full access to my personal compensation and my protected federal civil rights from a contentious, adversarial system that U.S. Congress has actively legislated to preclude from such contempt."

[The person who has personal knowledge of this statement must sign it.
DO NOT SIGN this statement until you are in front of a notary]

State of **Texas**
County of **SMITH**
[name of county where statement is notarized.]

SWORN to and SUBSCRIBED before me, the undersigned authority, on
the _____ day of _____, _____ year,
by _____
[PRINT the first and last names of the person who is signing this affidavit.]

Notary Public, State of **Texas** [Notary's signature.]

[Notary's seal must be included]

