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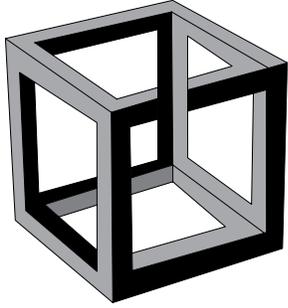
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LEGAL NEEDS OF MILITARY VETERANS, SERVICEMEMBERS, AND THEIR FAMILIES

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Establishing a Successful Veterans Benefits Project: TWO PERSPECTIVES

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[Editor's Note: The number of new veterans continues to grow as servicemembers return from active duty overseas, and the demand for legal aid programs to meet the legal needs of veterans unable to afford legal help is similarly increasing. Here we share the experiences of two initiators of veterans assistance projects. John S. Anderson is the attorney for the Legal Services Corporation-funded Legal Assistance Foundation of Metropolitan Chicago's Veterans' Rights project, and Victor Geminiani directs a similar project with the unrestricted Lawyers for Equal Justice program in Hawaii. We hope that their perspectives will inspire other organizations to create projects to serve our nation's growing veterans population regardless of the source of funding for the host organization.]

Perspective from an LSC-funded Legal Services Program

Amid a strong need nationwide to provide legal assistance to our country's veterans, Legal Services Corporation (LSC) programs are uniquely positioned to assist the neediest veterans. One such program, the LSC-funded Veterans' Rights Project of the Legal Assistance Foundation of Metropolitan Chicago (LAF), provides legal advocacy for veterans. Other LSC programs can provide similar services.

Veterans' Rights Project. LAF's Veterans' Rights Project was established in July 2007 to meet the legal needs of veterans and servicemembers in the Chicago metropolitan area. The project focuses on providing legal assistance and advocacy for veterans who have been denied the benefits to which they may be entitled, who have consumer law problems, and who seek to enforce their rights under the Servicemembers Civil Relief Act. Relying on its experience in other areas such as housing, employment, and family law, LAF also deals with many of the other related legal problems facing veterans, servicemembers, and their families.

Legal Aid and Veterans. When setting up a veterans project, an organization must assess its own resources and decide which legal issues to tackle. Although one project cannot handle all the issues that veterans face, LSC programs are in the best position to offer a "holistic" approach to veterans legal problems. An LSC attorney can provide, besides specialized help with veterans benefits, referrals to other experienced attorneys within the same organization for help on housing, family law, or other legal problems.

The core practice of a veterans project should be benefit claims. The denial of full benefits for service-related physical, mental, or emotional trauma may lead to a wide range of other problems. While the U.S. Department of Veterans Affairs (VA)

claims system is intended to be veteran-friendly, this is not always true. All too often, I have talked with veterans who are at the end of their rope trying to navigate the claims process and interpret the “legalese” of VA regulations. Attorneys provide invaluable legal assistance by interpreting laws and regulations; conducting legal, medical, and historical research; and cutting through bureaucratic red tape. Attorneys can help ensure that veterans receive in the shortest time the maximum amount of benefits to which the veterans are entitled.

Because veterans need referrals to other agencies, LSC veterans advocates must get out and meet the “players” in the local veterans community. Developing collaborative, working relationships with other veterans service providers is essential to closing gaps in available services.

Where to Begin Representation. A new veterans project must decide at what stage of the claims process to begin representation. Some legal aid organizations assist in filing initial claims for benefits. The Veterans’ Rights Project believes that attorneys can make the greatest difference during the appeals stage. Pros and cons being inherent to both approaches, any new project must evaluate how it can optimally use its attorneys, staff, and volunteers.

Pro Bono Programs. In many communities the local bar supports veterans with pro bono services. Pro bono attorneys are a critical “force multiplier” in advocating on behalf of veterans. A legal aid organization can draw upon bar associations, law firms, and individual lawyers to cultivate a network of attorneys willing to accept referrals of benefit cases.

Veterans benefits advocacy is a practice area with its own laws, regulations, quirks, and pitfalls for the unwary. Any dedicated lawyer can become familiar with the relevant law, but it takes a commitment of time and hard work to be an expert in this area. Many resources for

practitioners in veterans benefits are available from the National Veterans Legal Services Program and the National Organization of Veterans’ Advocates. Both have national mentoring programs for attorneys willing to take pro bono cases. Local law school veterans law clinics are also excellent resources.

A veterans program must be able to help pro bono attorneys become trained. An LSC program unable to conduct its own training can partner with organizations with resources for veterans benefits practitioners. Conducting training to pro bono attorneys is critical to the success of a veterans project since VA regulations require not only accreditation but also continuing legal education in veterans advocacy *after* accreditation.¹

After establishing training resources and identifying interested pro bono attorneys, the project must set an evaluation and referral procedure. In our project, we first do an initial intake to screen the clients. The most challenging part of screening is securing documentation, such as the latest VA rating decision, relevant medical and service records, and the veteran’s discharge paper (the U.S. Department of Defense’s DD-214). Rarely do veterans have enough documents in their possession to establish a claim definitively, but the burden of proof to be awarded benefits is low—it is as likely as not that there is a link between an in-service injury, disease, or event and the current disability.² Remember, however, that if the veteran already had everything to prove his claim, the veteran likely would not be asking an attorney for help.

My experience has been that screening takes a long time. The longer the period between military service and the application for benefits, the more challenges in connecting the current disability to service. Because veterans often are not familiar with the requirements to qualify for benefits, they apply for benefits for a variety of disabilities, some service-

¹See Office of the General Counsel, U.S. Department of Veterans Affairs, Accreditation, www.va.gov/ogc/accreditation.asp.

²See 38 C.F.R. 3.102 (2008); *Ortiz v. Principi*, 274 F.3d 1361 (Fed. Cir. 2001).

connected, some maybe not. During screening we work with the veterans to collect enough evidence to assess whether to represent them and which claims to pursue.

Once we decide to represent a veteran, we refer the case to VA-accredited attorneys in our pro bono network. We draft a transfer memo outlining the claims, the research that has been done and that may need to be done, and the theory of the case. We give the pro bono attorney a copy of the case file we created along with the transfer memo. We also give examples of any relevant letters or briefs. The pro bono attorney must then submit to the VA Regional Office a VA Form 21-22a, appointing the pro bono attorney as the veteran's recognized representative.³ VA recognizes only one VA Form 21-22a at a time and allows only one person to be appointed as the representative. We continue to advise the pro bono attorney and monitor the progress of the case.

Limitations on LSC Programs. A veterans program solely funded by LSC money has certain limitations on its advocacy on behalf of veterans. Such a project would have to accept clients based on LSC income standards, would not lobby or comment on proposed regulations or laws related to veterans benefits, would not bring class action lawsuits on behalf of veterans, would not represent certain incarcerated veterans (whether convicted or not), and would not recover attorney fees.

The income restriction is relevant because many veterans have income above the LSC guidelines but are still in desperate need of a legal advocate. By supplementing the veterans program with non-LSC money, the program may provide services to more veterans who may be low-income but above the LSC guidelines. The program would be required to use LSC money for LSC-qualified veterans and non-LSC money for non-LSC-qualified veterans.

The prohibition on participation in class action lawsuits is not insignificant in that it limits LSC veterans advocates from using this useful tool to force systemic change in VA regulations. An example of a class action lawsuit relevant to veterans advocates is *Veterans for Common Sense v. Nicholson*, No. C 07 3758, U.S.D.C. (N.D. Cal. 2007), in which the plaintiffs seek to force VA to follow the law and provide timely medical care and disability benefits for veterans suffering from disabilities caused by their military service. This is the type of case where an LSC organization could have a positive impact by changing the lives of veterans were it not for prohibitions on class actions.

In sum, LSC programs can be vital in satisfying the unmet needs of our veterans. Because veterans often face interrelated legal issues, a full-service legal aid organization can offer "one-stop" legal representation for low-income veterans to receive assistance in interrelated problems. Legal aid organizations can further assist veterans by developing a "subject-matter expert" in veterans benefits; the expert can act as a source of referral, advice, and encouragement to pro bono attorneys who want to help those who have served our country.

Perspective from an Unrestricted Legal Aid Program

Historically few legal aid programs have developed the knowledge, relationships, or program design required to serve veterans attempting to access VA's array of benefits. However, these unique times are an opportunity to expand staff and pro bono efforts of critical assistance to this long overlooked population of low-income clients. In recognition of their daily contributions to our country's security, veterans have gained a level of popular support unrivaled in the past fifty years. VA's rule changes have opened opportunities to fund such efforts.

³U.S. Department of Veterans Affairs, Appointment of Individual as Claimant's Representative, www.va.gov/OGC/docs/Accred/21-22a.pdf.

One great challenge that confronts legal aid programs has always been finding predictable and stable funding streams. Fortunately programs developing a project focused on helping veterans secure service-connected disability compensation benefits can now access a relatively new and permanent source of funding. As of July 2007, VA-certified advocates may enter into contingency fee arrangements with their clients similar to those available for representation of clients who are appealing Social Security Administration denials of disability benefits.

After congressional intervention, new VA rules were adopted to permit advocates to receive up to 30 percent of the retroactive award to a veteran for service-connected disability. VA automatically presumes a contingency rate of 20 percent to be permissible, but VA may approve a higher rate up to 30 percent after review if the issues are complex and the time spent in representation is substantial.

From local foundations initial revenue required to capitalize projects serving veterans is relatively easy to secure. Foundations prize new projects that are innovative, fill a recognized and compelling community need, and have the potential to become self-funded after the initial foundation support ends. In almost every part of our nation, a project focusing on serving the various advocacy needs of veterans will fill a recognized void, be politically popular, and certainly be considered innovative. Perhaps most important from a foundation's perspective, the project will become self-sufficient if the project successfully represents veterans in disability compensation appeals.

Since appeals can take anywhere between a year and five years to resolve, programs will not begin receiving sufficient fees to support program costs for at least a few years. However, once the funding stream begins, presuming case selection is well done to emphasize merit and project costs are controlled, the fees received should be sufficient to support the project while potentially expanding with continued success.

As in any successful program, other components have to be designed and implemented, these among them:

Outreach Effort. Inform those individuals and agencies that come into contact with veterans about the services of the legal aid program, and develop the trust necessary for them to make a referral. Possible referral partners are traditional entities such as human service providers, shelters, and government agencies. Most areas of the country have at least one veterans service organization such as the Veterans of Foreign Wars and the Disabled American Veterans receiving funding from VA to assist veterans in completing their initial applications for benefits. These service organizations are essential partners often in the best position to refer to your project veterans with strong claims on their appeals.

Intake System. A high-quality intake system gives the program an opportunity to gather relevant facts concerning a veteran's potential eligibility for service connected disability payments while the program gains the veteran's trust so necessary for a successful attorney-client relationship. Many veterans approach those offering assistance with some reluctance and suspicion. Often they have either encountered significant barriers in the system themselves or heard stories from others about misinformation and questionable intentions of those who have sought to guide them.

Careful Case Selection. Selecting cases carefully increases the program's successful advocacy while limiting the suspicion of those veterans whose appeals fail because of bad facts or law. Many potential clients apply for benefits after receiving questionable advice about their eligibility and few understand the complexities of the regulations and standards that determine eligibility. Often medical evidence to support a successful claim is lacking, and the history to establish a service-related connection to the disability is sketchy. Careful case selection helps make the hard program decisions necessary to determine how best to allo-

cate staff time and resources most likely to result in client victories.

Training and Support System for Staff and Pro Bono Volunteers. In light of the variety of possible VA benefits for which a veteran may be eligible and the complexity of the regulations covering each program, a training and support program for staff members and pro bono volunteers is essential. The National Veterans Legal Services Program, in Washington, D.C., has a thorough and well-organized veterans benefits manual and a training DVD (digital versatile disc) with a trainer's guide. The National Association of Veterans Advocates holds annual conferences and hosts an e-mail message board on opportunities for advocates to connect with their peers while receiving guidance on case handling.

VA Certification. VA rules permit lawyers and paralegals who have been certi-

fied by VA to practice within VA's various levels of review. Paralegals must take a test administered by VA to become certified, but lawyers admitted to any state bar are automatically certified once VA receives their application. VA also requires that three hours of VA-related continuing education be completed by the advocate for continued certification.

Relationship with the Local VA Regional Office. VA regional offices process the initial application and manage the first level of appeal. Very likely they have had little, if any, contact with advocates representing veterans during the appeal stage. Their interest is to process each appeal with as little time wasted (or spent) on the appeal. The project's task is to develop a working relationship with the local regional office so that the appeal process is as speedy and productive as possible.

COMMENTS?

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—The Editors

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