

September 13, 2019

New York State Permanent Commission on Access to Justice
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Via email: accesstojusticecommission@nycourts.gov

Dear Commission Members:

We are writing on behalf of the members of the New York City Veterans Law Working Group (“Working Group”) and write to advocate for increased civil legal services for the clients we serve. We are honored to be able to submit this statement as part of the Chief Judge’s 2019 Hearing on Civil Legal Services. We write to provide some background information regarding the justice gap for veterans and in particular to make the staff of the New York State Unified Court System and Office of Court Administration and the members of the New York State Permanent Commission on Access to Justice aware of a groundbreaking May 2019 report from the New York City Bar (“City Bar”) concerning inadequate financial support for legal services in connection with VA benefits.¹

The Working Group’s members include legal services advocates from a variety of civil legal practices that make serving veterans, military service members, and their families a focus of their work. The members provide civil legal services in a broad array of practice areas, including discharge upgrades, elder law, health law, landlord / tenant, public benefits, and VA benefits. Some advocates specialize in serving women veterans and veterans who are seniors and others work with clients who identify as LGBTQI+ and veterans who are incarcerated. Among other objectives, the Working Group aims to advocate for increased civil legal services to represent these critically important and vulnerable populations and to improve policy and practice as it relates to these clients. We serve as co-chairs of the Working Group. Fordham Law School’s Feerick Center for Social Justice and its Volunteer Lawyers for Veterans Program helped convene the Working Group and provides coordination support.

The Civil Legal Services Gap for Veterans, Military Personnel, and their Families is Well Established and Recognized

¹ See New York City Bar Association, *Report by the Military Affairs and Justice Committee, the Disability Law Committee, and the Social Welfare Committee Concerning Inadequate Financial Support From the City and State of New York for Legal Services to Obtain Benefits from U.S. Department of Veterans Affairs* (May 22, 2019), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-the-inadequate-financial-support-for-legal-services-for-veterans-seeking-benefits>.

The Working Group members thank the members and staff of the Permanent Commission for the focus and attention placed on veterans and related populations in the past. As previous testimony and fact-finding by the Permanent Commission has shown, veterans and military families face significant barriers in accessing legal services to address their civil legal problems. The testimony of veterans advocacy organizations shows that civil legal services are one of the most sought out categories of services for veterans. Advocates additionally testified to the close relationship between veterans' unmet civil legal needs and homelessness and economic instability.² In 2015, the Permanent Commission hearings featured a Veterans' Services Panel, in which providers testified to the unique set of challenges veterans face. Several veterans testified to the life-changing impact of civil legal services.³

The data on the civil legal services gap for veterans is overwhelming and conclusive. For example, the Legal Services Corporation's ("LSC") June 2017 Report found that "71% of households with veterans or other military personnel have experienced a civil legal problem in the last year[;] they face the same types of problems as others, but 13% also reported problems specific to veterans."⁴ Notably, 21% of respondents of households with veterans or other military personnel had six or more civil legal problems in the past year, with common areas including health (38%), consumer (36%), and employment (20%).⁵ Among those surveyed in the Report, 85% of respondents who reported that they had personally experienced a veterans' issue within the past year reported that the civil legal problem had a "substantial impact" on their lives—the most of any civil legal category.⁶ Notably, the Report concluded that "[l]ow-income veterans and other military personnel received inadequate or no professional legal help for 88% of their civil legal problems in 2017."⁷ The significant poverty rate among veterans makes this lack of access to civil legal services especially troublesome.⁸ Other studies have likewise concluded that there is a significant civil legal services gap for veterans.⁹

U.S. Department of Veterans Affairs ("VA") survey data also conclusively show that veterans' civil legal services needs urgently warrant expanded resources. For example, the VA's Community Homelessness Assessment, Local Education and Networking Groups for Veterans ("Project CHALENG") conducts an annual survey. The 2018 CHALENG Survey found that

² See Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York*, 16 (November 2015), http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/2015_Access_to_Justice-Report-V5.pdf.

³ *Id.* at 16, 18-19.

⁴ Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Services Needs of Low-income Americans*, 7 (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

⁵ *Id.* at 27.

⁶ *Id.* at 25.

⁷ *Id.* at 49.

⁸ *Id.* at 19 (stating that "[m]ore than an estimated 1.7 million veterans have family incomes below 125% of the [federal poverty level]").

⁹ See, e.g., Christine Blaskovich et al., *Veteran and Active Military Legal Needs Assessment in Montana*, 2 (Summer 2012), http://c.yimcdn.com/sites/www.montanabar.org/resource/collection/192E6931-16D2-4DCE-8DBF-A09AFDD2D42B/Veterans_Legal_Needs_Assessment_executive_summary.pdf; Rick Little & Stacy Garrick Zimmerman, *Helping Veterans Overcome Homelessness*, Clearinghouse Review, JOURNAL OF POVERTY, LAW AND POLICY (Sept.-Oct. 2009 Vol. 43, Nos. 5-6), <http://www.publiccounsel.org/tools/publications/files/CLEARINGHOUSE-RVW.pdf>.

legal services accounted for five out of the top ten highest unmet needs for male veterans (by ranking with 1 being the highest, legal assistance for child support issues (3), legal assistance to prevent eviction and foreclosure (6), legal assistance to help restore a driver's license (7), legal assistance for outstanding warrants and fines (8), and discharge upgrades (9)) and for four out of ten for female veterans (legal assistance for child support issues (7), legal assistance to prevent eviction and foreclosure (9), and discharge upgrade (10)).¹⁰

Access to Expert Legal Services is Life Changing for Low- and Moderate-Income Veterans With Civil Legal Problems

In the practice of Working Group members, we have seen time and again that representing veterans in civil legal matters can be life changing for our clients. This is especially true for indigent and otherwise vulnerable veterans, including those suffering from service-related disabilities. Outlined below are three client stories that illustrate the profound impact of civil legal services in helping veterans assert their legal rights and secure the benefits to which they are entitled.

Ms. S came to LegalHealth's Women Veterans Clinic at the Bronx VA in January 2017. She was seeking assistance with her SSI appeal. Upon speaking with Ms. S, the LegalHealth attorney realized that the disabilities that were preventing Ms. S from working originally stemmed from the military. Ms. S had severe PTSD, depression, and anxiety, all stemming from a brutal gang rape that had occurred while she was in the Marines, stationed at Camp Lejeune, more than thirty years ago. Ms. S never knew she qualified for service-connected VA benefits, because she believed her injury would have had to occur during combat for it to "count." Ms. S had never disclosed what happened to her to anyone, including her doctors. At the time of her intake, Ms. S was living in a studio apartment she shared with her son and granddaughter. The apartment was small—they could only fit two beds—so Ms. S shared a bed with her eight-year-old granddaughter.

Ms. S' PTSD had fractured her memory, leaving her originally unable to remember many details of her service. But after countless hours with the attorney working alongside her psychology team, Ms. S was able to disclose her experiences. Ms. S had been gang raped by three men in her unit, and had become pregnant as a result of the attack. Despite her devout faith, she decided to have an abortion, which had further traumatized her. Since the attack, Ms. S had never held a job for more than a month. From 2014-2015 she was homeless, during which time she attempted suicide twice.

Together with the assistance of her attorney, Ms. S was able to apply for her benefits and put together a strong application, showing the markers required by the VA to prove that the attack had occurred, and the long trauma she had endured. In February 2018, Ms. S was granted 70% service-connection for her mental health, along with unemployability benefits, which allowed her to receive the highest level of disability pay from the VA. She received \$15,000 in backpay, and now receives \$3,057 every month, which will likely continue for the rest of her life. Ms. S was able to get her federal student loans discharged due to her proven disability. Additionally,

¹⁰ U.S. Dep't of Veterans Affairs, *Community Homelessness Assessment, Local Education and Networking Groups (CHALENG)* 2 (Feb. 2019), <https://www.va.gov/HOMELESS/docs/CHALENG-2018-factsheet-508.pdf>.

her disability level enabled her to qualify for a VA home loan at an extremely good rate, and in late summer 2018, Ms. S, her son, and her granddaughter, moved into their new, three-bedroom home in upstate New York.

Mr. X is an honorably discharged Army veteran who originally came to City Bar Justice Center's Veterans Assistance Project in 2014 seeking assistance with appealing a denial of VA Disability Compensation. While stationed overseas in Iraq, Mr. X had been injured by heavy equipment, which resulted in a traumatic brain injury ("TBI") but the incident had not been carefully documented in Mr. X's military records. Mr. X had, for years, filed countless claims with the VA (*pro se* or, at times, with the assistance of non-attorneys) which claims were repeatedly denied. In 2013, Mr. X again filed a claim for his TBI, and was again denied when the VA argued his condition was not connected to his time in the service.

At a City Bar clinic almost a year later, in 2014, Mr. X met for the first time with his City Bar-assigned *pro bono* attorneys. After their initial meeting, Mr. X's volunteer attorneys, with the assistance and oversight of the Project Director of the City Bar's Veterans Assistance Project, assisted Mr. X to appeal the denial he had received. Volunteer attorneys through the City Bar continued to assist Mr. X throughout the duration of the appeals process, which spanned nearly five years and required his attorneys to represent Mr. X before the U.S. Department of Veterans Affairs' Board of Veterans Appeals.

Finally, in late 2018, after years of persistence by his attorneys, Mr. X, who had been unable to work since leaving the Army and, at times during this process, had found himself dealing with homelessness, was granted the life-changing benefits to which he was entitled—over \$174,000 in retroactive benefits and a 100% disability rating effective to the date Mr. X originally filed his 2013 claim. Mr. X now receives \$2,906 every month, which monthly benefit will likely continue for the rest of his life.

Recently, the Volunteers of Legal Services (VOLS) Elderly Project, alongside co-counsel from the law firm of Alston & Bird LLP, in a lawsuit in the New York County Supreme Court, alleged source of income discrimination against the landlord of Mr. R, a 64-year old Vietnam-era veteran. The client had lived in the same rent-controlled apartment in Manhattan since 1963. After the passing of his family member, the tenant's rent subsumed nearly his entire income from his Veterans Administration service-connected disability benefits and his pension from his time working for the United States Postal Service.

To remain in his apartment Mr. R had applied for the Senior Citizen Rent Increase Exemption (SCRIE), but he needed the landlord's cooperation to acknowledge his tenancy after his family member passed away. Unfortunately, the landlord refused to help their tenant of over 53 years and created roadblocks to the process, causing the application for SCRIE benefits to be denied. VOLS believed that the landlord's failure to cooperate with the SCRIE application process violated the New York City Human Rights Law and that the repeated and unwanted "buy-out" offers violated the anti-tenant harassment statute. After taking steps to avoid litigation, VOLS filed the lawsuit and the matter was settled shortly thereafter. The landlord conceded that they were required to cooperate with Mr. R's SCRIE application and that they were not entitled to any increase in his rent. Mr. R was able to stay in his home.

Securing VA Benefits for Eligible Veterans Increases Household Incomes and Reduces Local and State Expenditures of Public Benefits

Earlier this year, in May 2019, a groundbreaking report from the New York City Bar was issued concerning inadequate financial support for legal services in connection with VA benefits. This report served as the impetus to this letter to the Permanent Commission. A copy of that report is attached. The report highlights several disturbing facts. New York State has the fifth largest veteran population in the country, but lags far behind other states in benefits received from the VA. Presently disabled and low-income veterans in New York each year receive approximately \$2.6 billion from the VA. There are millions of federal dollars at stake for New York and its veterans in these numbers. Between the VA's 2016 and 2017 Fiscal Years, New York's veterans saw a drop statewide of \$32 million dollars in VA benefits for its disabled and low-income veterans. Per the VA's own reporting, less than 17% of veteran's statewide and only 15.5% of NYC veterans received either Disability Compensation or Pension benefits, compared to 25% in California, 29% in Texas, and 24% in Florida, and an estimated 23 to 24% of veterans nationally. Additionally, per the VA's own statistics, New York veterans have lower income and educational attainment than veterans in these other states, showing they probably need VA benefits more, not less, than veterans across the nation. If 23 to 24% of New York's veterans received either Disability Compensation or Pension Benefits, just the national average (instead of the current 17%), it would mean more than fifty thousand additional New York veterans and their families would be receiving VA benefits worth tens of millions of dollars to fuel the state's economy.

The City Bar's report highlights that most veterans have to try to navigate the VA's system *pro se* or with a non-attorney because of the lack of Veterans Law practitioners. Historically, this had been seen as adequate. Veterans, after all, until 1989, had no mechanism by which to legally challenge VA benefit decisions. Today, however, Veterans Law, as with federal administrative practice in both the Immigration and Social Security space, has become dramatically more complicated. Over the last thirty years, since the passage of the Veterans Judicial Review Act in 1988, lawyers have established a proven track record of assisting clients who were previously denied VA benefits. Today lawyers can appeal denials of benefits to the VA's Board of Veterans Appeals, to the U.S. Court of Appeals for Veterans Claims ("CAVC") (the nation's newest federal court hearing over 4,000 cases every year on the nation's busiest federal docket), to the U.S. Court of Appeals for the Federal Circuit and even to the U.S. Supreme Court. At the City Bar Justice Center's Veterans Assistance Project where *pro bono* attorneys assist veterans with representation at both the agency level and at the CAVC, in 2018, City Bar volunteers obtained \$34,418 in new, ongoing, monthly VA benefits and \$731,307 in retroactive benefits in cases, most of which the VA had previously denied. The previous year, in 2017, City Bar volunteers obtained \$47,804 in new, ongoing, monthly VA benefits and \$1,119,197 in retroactive benefits. The cost to obtain those results? The City Bar's program, which utilizes a *pro bono* model, is staffed by only one full-time attorney (the project director) and a full-time project coordinator. Outside of the *pro bono* model, similarly impressive statistics can and are obtained by legal service attorneys as well.

The New York State Disability Advocacy Program Offers a Cost-Effective Model for Potential Replication

In 1983, New York State had the foresight to introduce the Disability Advocacy Program (“DAP”). DAP was transformational. Legal Services NYC, a member of the New York City Veterans Law Working Group, successfully piloted DAP when it was initially established. In the 35 years since, the Commissioner of the New York State Office of Temporary and Disability Assistance (“OTDA”) has made grants to not-for-profit legal services corporations and not-for-profit agencies who assist New Yorkers to obtain federal benefits from the Social Security Administration. Per OTDA’s 2016 Report on DAP, in 2016, DAP cost New York state \$7.76 million in tax revenue. In return on this investment, DAP recipients recovered:

over \$18.3 million in retroactive benefits paid to successful claimants who in turn are more financially secure and able to boost the economy as they spend these federal dollars in their local communities, paying rent and buying basic necessities. As a further benefit to the State, the DAP program activity in 2016 resulted in an estimated \$4.8 million public assistance cost avoidance realized by moving individuals from TANF/State/locally funded public assistance to more appropriate federal disability assistance.¹¹

DAP provides an excellent model on which to replicate a similar “Veterans Disability Advocacy Program” (“VDAP”) with the U.S. Department of Veterans Affairs as opposed to the Social Security Administration. Just as DAP was expected to be cost neutral (and actually *generates* revenue) for New York, VDAP grantees, similarly, could and should be expected to demonstrate how they save New York taxpayers more in revenue than what they cost by transferring veterans and their beneficiaries from less generous state and city benefits to more generous federal benefits. A 100% service-connected disabled veteran with a dependent child presently receives \$3,171 a month. This monthly compensation would be *in addition* to any entitlement to Social Security benefits a veteran may have. Indeed, it is often the case that a veteran may not be entitled to any benefits from Social Security but is entitled to benefits from the VA. It is simply unconscionable for New York taxpayers to bear the costs of caring for disabled and low-income veterans or their survivors when Washington D.C., who created the veteran in need, promised to absorb that cost and is required to do so by law, fails to do so. Based on the VA’s own statistics there are likely tens of thousands of veterans across the state not receiving VA benefits to which they are entitled. The data show that unrepresented veterans are too-often unable to successfully navigate the initial application process and the VA’s appeal process.

As DAP is administered by OTDA, so too could VDAP. Alternatively, the program could be co-managed by the Commissioner of OTDA and the Director of the New York State Division of Veterans’ Services (“NYSDVS”) or, perhaps, by the Director of NYSDVS exclusively. NYSDVS and its dozens of non-attorney benefits advisors across the state have, for decades, assisted veterans and their loved ones obtain VA benefits. Other Veteran Service Organizations (VSOs) such as the American Legion, Disabled American Veterans, and the Veterans of Foreign Wars to name a few, offer similar services. Both NYSDVS and VSOs are, for all intents and purposes, entirely dependent on their staff of non-attorneys to assist veterans and their survivors

¹¹ New York Office of Temporary and Disability Assistance, *Disability Advocacy Program Report to the Legislature*, 2 (Jan. 1, 2016-Dec. 31, 2017), <https://otda.ny.gov/resources/DAP-Report.pdf>.

in complex appeals of benefit denials. NYSDVS and VSOs typically don't, and, in many instances, can't, refer cases to attorneys due to historical tensions between the VSOs and the veterans serving bar.

Nonetheless, countless veterans are told (correctly) that they need the assistance of an attorney to help them with their VA claim and attempt to seek them out. Non-profit organizations that do the work such as the City Bar Justice Center's Veterans Assistance Project and the Veteran Advocacy Project have waitlists that extend for months and, at present staffing levels, are in no way capable of handling dozens, let alone thousands of referrals. While there are other legal service providers providing targeted assistance to veterans, the legal services resources for VA benefit claims are extremely limited. Other organizations that do not have a waitlist either place strict criteria on either the type of VA benefit case with which they will assist or the type of assistance offered. Without a VDAP, a vicious cycle ensues for the unrepresented low-income, disabled veteran who has been unsuccessful with non-attorneys but cannot find a lawyer to take her case. Benefits advisors at NYSDVS and elsewhere need to be able to refer complex cases to lawyers and a VDAP program would incentivize non-profit legal service organizations to have the staff in place to take these cases.

On behalf of the following members of the New York City Veterans Law Working Group, we encourage the funders and policy makers in New York State, including the members of the New York State Permanent Commission on Access to Justice and decision makers with the New York State Unified Court System and Office of Court Administration, to take steps to help establish a VDAP as a pilot program.* The New York City Bar report highlights that the precise number of veterans who should be receiving VA benefits statewide is unknown but is likely in the tens of thousands given New York's population of just over 800,000 veterans. Establishing VDAP as a pilot program would allow non-profit legal organizations to both demonstrate that 1) the VDAP budget is actually saving New York's taxpayers money by transferring low-income and disabled New Yorkers from state and city benefits to federal benefits, and 2) the program budget and size should be expanded and adjusted so long as it remains the case that VDAP attorneys are saving New York City and New York State money by succeeding where non-attorneys earlier in the process failed.

Respectfully,



Kent Eiler, Project Director of the Veterans Assistance Project of the City Bar Justice Center



Peter Kempner, Legal Director and Elderly Project Director of Volunteers of Legal Services

*New York City Veterans Law Working Group Member Organizations:

Fordham Law School Feerick Center for Social Justice

City Bar Justice Center

Legal Services NYC

New York Legal Assistance Group

Veteran Advocacy Project

Volunteers of Legal Service