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New York State Permanent Commission on Access to Justice
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Chief Judge's Civil Legal Services Hearing
September 21, 2020

Statement from New York City Veterans Law Working Group

Dear Commission Members,

We are members of the New York City Veterans Law Working Group (“Working Group”) and are writing to advocate for increased screening for prior military service by the courts and by legal services providers. Only by screening all individuals seeking assistance can we ensure that those who have served in our nation’s armed forces are provided culturally competent services and are able to access all of the benefits and resources available to them. We are honored to be able to submit this statement to the New York State Permanent Commission on Access to Justice (“Permanent Commission”) for consideration in connection with the Chief Judge’s 2020 Hearing on Civil Legal Services.

The Working Group’s members include legal services advocates from a variety of civil legal practices that have focused practices serving veterans, military service members, and their families. The members provide civil legal services in a broad array of practice areas, including discharge upgrades, elder law, health law, landlord/tenant issues, public benefits, family law, and VA benefits. Some advocates specialize in serving particular veteran populations, such as women, seniors, LGBTQ, or those 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. The primary authors of this letter are Peter Kempner, Legal Director and Elderly Project Director of Volunteers of Legal Services (VOLS), and Samantha Kubek, Coordinating Attorney for the Veterans Initiative in LegalHealth, a division of the New York Legal Assistance Group (NYLAG). Mr. Kempner co-chairs the working group and Ms. Kubek is a working group member. Fordham Law School’s Feerick Center for Social Justice’s Veteran Rights Project helped convene the Working Group and provide coordination support.

Screening for Military Service by Legal Services Providers

As attorneys whose practices focus on working with veterans, active duty service members, and their families, we often find ourselves in the position of training our legal services colleagues in military cultural competency and encouraging them to make screening for prior military service

an essential part of their intake procedures. By properly screening for prior military service, an attorney has the potential to unlock a host of benefits, potential defenses, and resources for their clients. The key to effectively screening for military service is to properly ask the question. It is not as simple as asking “Are you a veteran?” Because of the experiences many individuals had in the military, they may not consider themselves “veterans.” It is important to screen in a manner that captures as many individuals as possible who served our country. A significant number of Black men and women joined the US military to safeguard America. The use of mandatory screenings would help to ensure Black Indigenous and People of Color (BiPOC) veterans are counted and received the benefits they have earned through their sacrifice to our country.

Different entities define “veteran” differently. The United States Department of Veterans Affairs may not consider certain people who served veterans because of their discharge status, while other government entities define these same individuals as veterans. Some who served may not consider *themselves* veterans because they served during peacetime or because they were never deployed overseas or never served in a combat role. Many veterans are unaware whether they “count” as a veteran when asked.

By asking, “Have you ever served in the U.S. military?” we ensure that all veterans are counted properly. Additionally, it is important to ask not just whether the individual who has come for assistance has served, but to also ask whether anyone in the household has served. Often, services and benefits available to veterans can positively impact the entire household. Take the example of a man who came in for assistance because he was facing an eviction, and responded that he had not served in the U.S. military. By not asking whether his wife, who lives with him, has ever served, the provider may never become aware that the client, through his veteran spouse, may have access to programs such as HUD-VASH Section 8 vouchers, Supportive Services for Veterans Families (“SSVF”) grants, and others, that can enable them to avoid eviction and stay stably housed.

Veterans Homelessness and the COVID-19 Crisis

As with most low-income New Yorkers, one of the most pressing legal issues faced by the veterans we serve is eviction and homelessness prevention. Over the past decade, New York State—working alongside legal services providers, county veterans service agencies, veteran service organizations, the VA, and other community partners—has made tremendous strides in addressing the scourge of veteran homelessness. Using federally funded programs like the VA’s SSVF, HUD-VASH Section 8, and the Homeless Providers Grant and Per Diem Program, in conjunction with local initiatives like the Universal Access to Counsel program in New York City, New York State has made tremendous strides in reducing its veteran homeless population.

Now the fight against veteran homelessness faces an unprecedented obstacle. The COVID-19 crisis has the potential to undo much of the progress we have made and return us to the days when veteran homelessness was much more pronounced and widespread. It is estimated that tens of thousands of New Yorkers may face homelessness when the current moratorium on eviction filings and executions of warrants of eviction is lifted. Undoubtedly, scores of veterans—often the most vulnerable members of our society—are among those facing homelessness. These veterans often suffer from service-connected disabilities, substance abuse disorders, and mental health disabilities. Many were formerly homeless. If evicted from their homes, many of these

veterans will end up in shelters or on the streets. Homeless shelters have proven to be a hotbed for the spread of COVID-19 and may put veterans at significantly higher risk for this disease.

Veterans have already faced unique risks from COVID, due to both their increasing age and their proclivity to certain pre-existing medical conditions, often linked to their time in the military. The CDC has found that older adults and people of any age with serious underlying medical conditions are at higher risk for COVID-19.¹ More than half of New York's veteran population is over the age of 65.² Exposure to Agent Orange during Vietnam and burn pits during the recent conflicts have left many veterans suffering from respiratory illnesses, heart conditions, liver and kidney issues, and diabetes.³ All of these factors leave the veteran population uniquely exposed to COVID-19. COVID-19 infection can lead to additional legal issues, for example, an increased risk of eviction as a result of the financial implications of worsening medical conditions.

To prevent a backslide in the gains made in preventing veteran homelessness, we must do everything we can to prevent the eviction of veterans, which requires their having access to free legal services. It has been proven that tenants who are represented by counsel in an eviction proceeding are much more likely to be able to remain in their homes. Having access to counsel ensures the ability of veterans to benefit from the protections provided by the New York Tenant Safe Harbor Act, grants and other programs to help pay off rent arrears, and ensure their rights are protected. We also want to make certain that those providing legal services to veterans are culturally competent and properly trained to provide resources and counsel to this distinct population.

Ensuring Access to Benefits and Services

As previously mentioned, there are many programs dedicated to rehousing homeless veterans and preventing the eviction of veterans that are housed. The HUD-VASH Section 8 program provides housing vouchers to homeless veterans which allow them to find safe and affordable housing in the community. The SSVF program provides grants to veterans facing homelessness through evictions, to prevent utility shut offs, and to secure new housing by paying broker's fees, rent deposits, moving costs, as well as up to six months rent for veterans seeking employment or benefits.

There are also many benefits available to veterans from the VA. These benefits, which can be life-changing, are woefully underutilized by the veteran population. Veterans who were injured in service or who experience illness related to their service may be eligible to receive Service-Connected Disability benefits. Veterans who served during wartime and who are now elderly or experience non-service related disabilities may be eligible for the wartime pension from the VA. These benefits are often more generous than benefits from state and local Departments of Social Services and even benefits from the Social Security Administration. By screening for veteran status, a legal services provider can identify the right type of benefit or program for their client

¹ Centers for Disease Control and Prevention, *People Who Are at Increased Risk for Severe Illness* (updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>

² New York State Health Foundation, *Veterans and Health in New York State* (July 2017), <https://nyshealthfoundation.org/wp-content/uploads/2017/11/veterans-and-health-in-new-york-state-july-2017.pdf>

³ U.S. Department of Veterans Affairs, *Diseases Related to Agent Orange*, <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/agent-orange/related-diseases/>

and not only help to prevent evictions and utility shut offs, but also potentially lift their clients out of poverty in the long term.

The Court's Role in Screening for Military Service

The New York State Court system can also play a crucial role by screening litigants for military service, particularly in courts where there is a high percentage of low income and *pro se* litigants. Currently, OCA and its partner agencies screen for veteran status in the criminal context in order to offer diversion to Veterans Treatment Courts where appropriate. This same screening process can be used in the civil context to provide referrals to legal services providers serving the veteran population, as well as referrals to local veterans service organizations who can provide social services and access to benefits and resources to veterans in need. Proper screening can also ensure that all active duty service members and their families can be protected by the provisions of the Servicemembers Civil Relief Act and the New York State Sailors and Soldiers Civil Relief Act when appropriate. This will ensure that service members who are actively serving on federal orders or state orders, and their families, are protected from civil judgments and eviction while they serve our nation.

Bridging the Veterans Justice Gap

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 Of greatest concern, 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

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.ymcdn.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>.

A report published in June 2018 by the United States Interagency Council on Homelessness estimates that roughly 9% of the adult homeless population are veterans.¹⁰ The Point-in-Time (PIT) Count is an annual effort led by the U.S. Department of Housing and Urban Development (HUD) to estimate the number of Americans, including veterans, without safe, stable housing. It is one of the tools used to assess progress each year toward VA's priority goal of ending homelessness among veterans. The 2019 PIT Count found that 37,085 veterans experienced homelessness in January 2019.¹¹ These veterans have high rates of psychiatric disorders, substance abuse, and chronic medical conditions. While the majority of the homeless veteran population (and the veteran population in general) are men¹², veteran women are more than twice as likely as non-veteran women to experience homelessness¹³. It is well established that representation in housing cases can prevent evictions and illegal rent increases that force veterans into shelters.

The VA's Community Homelessness Assessment, Local Education, and Networking Groups ("Project CHALENG"), conducts an annual assessment of homeless veterans to understand local challenges, identify unmet needs and encourage partnership action to meet those needs.¹⁴ Every year, legal assistance in fighting eviction is among the top 10 unmet needs of veterans nationwide.

Access to Culturally Competent Legal Services is Life Changing for Low-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 two 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.

When Robert W, a 65-year-old LGBTQ Vietnam-era veteran, came to Volunteers of Legal Service this past summer, he was on the verge of eviction. Mr. W had lived in his rent stabilized apartment on West 17th Street for the past decade with his partner, who had been in the apartment for over 30 years. Despite being in a long term, committed relationship, he and his partner never married. His partner passed away in December 2018, and Mr. W was the primary

¹⁰ United States Interagency Council on Homelessness, *Homelessness in America: Focus on Veterans* (June 2018) https://www.usich.gov/resources/uploads/asset_library/Homelessness_in_America_Focus_on_Veterans.pdf

¹¹ U.S. Department of Veterans Affairs, *Veterans Experiencing Homelessness* (last updated November 18, 2019) https://www.va.gov/HOMELESS/pit_count.asp#:~:text=The%20January%202019%20PIT%20Count,-The%20most%20recent&text=37%2C085%20veterans%20experienced%20homelessness%20in,through%20the%20HUD%20DVASH%20program

¹² U.S. Department of Housing and Urban Development, *The 2016 Annual Homeless Assessment Report (AHAR) to Congress Part 2* (December 2017).

¹³ U.S. Department of Veterans Affairs National Center on Homelessness Among Veterans, *Homeless Evidence & Research Roundtable Series: Women Veterans and Homelessness* (July 2016) <https://www.va.gov/HOMELESS/nchav/docs/HERS-Womens-Proceedings.pdf>

¹⁴ U.S. Department of Veterans Affairs, *Veterans Experiencing Homelessness* (last updated January 17, 2020) <https://www.va.gov/homeless/challeng.asp>

caregiver during his illness. Soon after, the landlord stopped accepting rent payments and told Mr. W that he would have to leave his home, because his name was not on the lease.

Naturally, after his partner passed, he wanted to remain in the apartment he shared with his partner. If they had been legally married, he would have automatically been able to remain in the apartment, but instead, the landlord commenced an eviction proceeding against him. He attempted to get help from other legal services providers, but was turned down repeatedly because he did not live in the right zip code or because the other providers did not see a path forward in the case.

Establishing Mr. W's legal right to succession of the apartment was only the first step to ensure that he would not be added to the ranks of homeless veterans. During the time the case was pending, over \$7,000 in rent arrears had accrued, and he was having trouble making ends meet. His Social Security Retirement benefits were only \$930 per month, and the rent for the apartment was \$1,047. When his partner was alive, they were a two income household and were able to cover the rent. But the loss of his partner also meant the loss of that second income.

Recognizing him as a wartime veteran over the age of 65, a trained legal services attorney knew he was eligible for a pension from the VA. The attorney assisted Mr. W in obtaining his discharge papers from the National Archives, and applying for his VA pension. His income was increased to \$1,200 per month. Along with his Food Stamp benefits, he was now able to afford to stay in his apartment. The attorney then also assisted him in applying for a "one shot deal" grant from the New York City Human Resources Administration to pay off his arrears.

The final piece of assistance offered Mr. W was to assist him in applying for the Senior Citizen Rent Increase Exemption benefit (SCRIE). Because Mr. W was over 62 years old, his income was less than \$50,000 per year, his rent exceeded 30% of his income, and he lived in a rent regulated apartment, Mr. W qualified to have his rent frozen under this program. As long as he continues to qualify, his rent can no longer be raised, thanks to this benefit. With his succession rights established and his apartment made affordable, Mr. W will be stably housed for many years to come.

In 2019, Frank R. came to the New York Legal Assistance Group, facing eviction in a nonpayment proceeding. Mr. R is an 88-year old Korean War veteran, who had lived in his apartment for over forty years. As a result of unexpected expenses, he did not have enough income to pay his rent, and had fallen behind, owing his landlord over \$18,000.

Mr. R's nephew, who is his primary caregiver, contacted NYLAG for assistance with the eviction proceedings. As part of the intake, NYLAG attorneys inquire as to not only the past military service of the caller, but of all household members. Upon learning that Mr. R was a veteran, NYLAG immediately identified him as eligible for the VA Non-Service Connected Pension based on his age, dates of service, and limited income. NYLAG assisted Mr. R in gathering all the necessary supporting documents and filed the application on his behalf.

The VA quickly awarded Mr. R the pension, increasing his monthly income by \$410, as well as providing retroactive benefits of nearly \$3,000. This extra income was crucial in the negotiation

of a settlement agreement with his landlord, allowing Mr. R to stay in his home and ensure greater housing stability for the future.

Despite the significant challenges facing the veteran population, few legal services providers in New York routinely screen for veteran status. Veterans often do not self-identify, and without proper screening, these veterans can get lost in the shuffle. By failing to screen every individual who seeks help for prior military service, these providers often turn away members of this vulnerable population. They are also potentially failing to identify important benefits that the veteran may be eligible for, which can have a dramatic impact on their case. In addition to the myriad of benefits that civilians are eligible for, veterans have access to unique benefits that can be used to ensure housing and income stability.

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 ensure increased screening for military service by the courts and by legal services providers serving low-income litigants. The courts could incorporate a question about military service into *pro se* forms, and ask about veteran status when making determinations about the assignment of court-appointed attorneys. This will serve not only to put the Court on notice of a veteran petitioner or defendant, but will also put providers on notice if the litigant makes their way to a legal services office. Screening for military service and reporting on the number of military-related households should be a condition of funding for legal services providers. Currently, there is mandatory reporting on a broad range of demographic information; adding this additional data point should not be a burden and will allow providers to provide better services to the communities they serve.

For those who served our country and have risked their lives for others, and as part of our duty to serve those who have sacrificed so much, we must ensure that all those who have served are properly screened for services and benefits. Thank you for your consideration.

Respectfully,



Peter Kempner, Legal Director of Volunteers of Legal Services



Samantha Kubek, Coordinating Attorney for the Veterans Initiative in LegalHealth, New York Legal Assistance Group

*New York City Veterans Law Working Group Member Organizations:
Fordham Law School Feerick Center for Social Justice
Legal Information for Families Today (LIFT)
Veterans Justice Project, Legal Services NYC

New York Legal Assistance Group
Veteran Advocacy Project
Volunteers of Legal Service