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New York State Permanent Commission on Access to Justice
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Chief Judge's Hearing on Civil Legal Services in New York
September 19, 2022

Statement from members of the New York Veterans Law Working Group

Dear Commission Members,

On behalf of the New York Veterans Law Working Group (“Working Group”), we are writing to highlight the importance for legal services providers to adopt policies and practices that address the unique civil legal challenges low-income veterans, military service members, and their families face while adequately accounting for their diverse needs and experiences. Recognizing military service and providing culturally sensitive services must be a part of the diversity, inclusion, and elimination of bias work that is critically important to quality legal representation. We are honored to have the opportunity 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 2022 Hearing on Civil Legal Services.

The 714,000 veterans in New York State¹ are a remarkably diverse population.² They represent a wide range of racial and ethnic backgrounds, age groups, and sexual orientations, among other characteristics. What simple demographic data does not always capture, however, is the long-term impact these immutable characteristics have on veterans’ experiences both during and after service, which can lead to socioeconomic challenges and an increased need for civil legal services. Meeting the diverse legal needs of veterans requires an equally diverse set of approaches from the legal services community, beginning with military cultural competency and screening for military affiliation.

The Working Group comprises legal services advocates from various civil legal organizations across the State with practices focused on serving veterans, military service members, and their families, as well as law-school affiliated entities. In addition to engaging in

¹ *Annual Report 2021*, New York State Div. of Veterans’ Services (2021), 8, https://veterans.ny.gov/sites/default/files/2021_dvs_annual_report_website.pdf.

² *Id.* at 5–6.

convening and advocacy, the group's members provide civil legal services to veterans in a broad array of practice areas, including discharge upgrades, landlord/tenant issues, public benefits, VA claims, and elder, family, and health law matters. Some advocates specialize in serving particular populations, such as women, seniors, or LGBTQ+ veterans. The Working Group aims to advocate for increased civil legal services critically important to these vulnerable populations, while also striving to improve policies and practices as they relate to these clients. The Working Group is co-chaired by Peter Kempner, the Legal Director of Volunteers of Legal Services (VOLS) and Adjunct Clinical Professor of the Veterans Justice Clinic at New York Law School, and Samantha Kubek, Assistant Clinical Professor and Director of the Robert W. Entenmann Veterans Law Clinic at the Maurice A. Deane School of Law at Hofstra University. Fordham Law School's Feerick Center for Social Justice and its Veterans Rights Project convened the Working Group and provide logistical support.

Screening for Military Status

As legal services attorneys who primarily work with veterans, we would like to highlight the vital importance of training civil legal services providers in military cultural competency and making screening for military affiliation an essential part of their intake procedures. Asking the question, "Have you or anyone in your family or household ever served in the U.S. military?" is a simple yet effective method of ensuring that a veteran or family member's military affiliation is accounted for, opening up a vast number of possible benefits and solutions to legal problems that might not have otherwise been considered.

The benefits available to veterans through the U.S. Department of Veterans Affairs ("VA") and other programs are extensive and often life changing. They include, among others, disability compensation for service-connected injuries, benefits for low-income veterans disabled through means other than their military service, housing subsidies, VA-sponsored health care, education benefits, and employment readiness assistance.³ Military-related benefits are often more generous than those offered by parallel federal, state, and local-level programs, yet too often remain unknown to those who have earned them. Legal services providers must screen clients for military affiliation to ensure that these individuals and their families obtain access to these resources. In 2018, more than half of all veterans nationwide had an income below 400% of the federal poverty level guidelines (FPL).⁴ By screening for veteran status, a legal services provider can potentially uncover benefits and programs their clients can obtain, which may not only help prevent an imminent crisis such as an eviction but also potentially lift their clients out of poverty for the long term.

³ "VA benefits for service members," U.S. Dept. of Veterans Affairs, last updated November 22, 2021, <https://www.va.gov/service-member-benefits/>.

⁴ Jonathan E. Vespa, *Those Who Served: America's Veterans from World War II to the War on Terror*, U.S. Census Bureau (June 2020), 8, <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-43.pdf>.

Military Cultural Competency

Equally as important as understanding the benefits and programs available to veterans is having a working familiarity with military cultures. Military service is a unique experience with internal practices and expectations unlike those of most civilian professions, meaning that veterans may approach their civil legal issues from perspectives shaped by their military service. As a legal services provider, seeing problems from a veteran client's point of view and approaching issues in ways that are sensitive to their backgrounds and experiences is crucial to providing competent services.

Additionally, being familiar with the military's administrative processes and veterans' experiences in them allows legal services providers to better identify eligibility for benefits. One reason veterans can be barred from VA benefits, for example, is having "bad paper discharges," military discharge characterizations that are less-than-honorable. A common misconception in civilian society is that discharges are merely characterized as "honorable" or "dishonorable." However, there are six discharge types given to service members upon separation from active duty and they determine what benefits veterans will be able to access. The most common status, Honorable, indicates that a service member met or exceeded performance standards and opens the door to all veterans benefits. Other, middle-ground discharge statuses can be a result of any number of processes, including in lieu of court-martial. These each restrict a veteran's access to benefits and services depending on the character, amount of time, served and other factors: General Under Honorable Conditions, Undesirable/Other Than Honorable discharges, and Entry Level Separation, which is usually Uncharacterized. The lowest two discharges, Bad Conduct and Dishonorable, result from courts-martial and bar a veteran from nearly all benefits and resources.⁵

Command discretion determines whether servicemembers face discipline and can lead to disparate treatment: while one person could face trial for drug use in the Marines and receive a Bad Conduct discharge, a soldier could commit the same offense in the Army and end up with a General discharge. Other injustices stem from injuries: Symptomatic behavior from brain injury or trauma may be disciplined as misconduct leading to a less-than-honorable discharge that denies a veteran the very health care and services needed to recover. Less-than-honorable discharges also tend to carry deep stigma that follows veterans into civilian life and creates challenges for both psychological and financial stability.

Understanding the various discharge characterizations and their implications is especially important for legal services providers because so much misinformation circulates about how discharge statuses impact eligibility for benefits. Some individuals who served in the military may not even consider themselves "veterans" because they received a less-than-honorable discharge. Conversely, others with Honorable discharges may not consider themselves veterans because they were not deployed overseas or did not serve in active combat. Screening veterans for military

service in a culturally sensitive manner opens the door to benefits and resources that can be key to successfully resolving complex civil legal issues.

Veterans of Color

In New York 23% of veterans identify their race or ethnicity as other than white.⁶ This figure is much higher in New York City, where the veteran population is composed of more than 38.9% persons of color.⁷ All veterans face reintegration challenges that can lead to legal issues, including struggles related to mental health, job insecurity, and financial difficulties. Yet according to the Legal Services Corporation's *2021 Report of the Veterans Task Force* (the "LSC Report"), "[v]eterans of color experience these challenges disproportionately because they face compounding racial or ethnic discrimination during and after service."⁸ For example, in 2018, while only 18.4% of the total veteran population nationwide identified as persons of color, nearly half (43.2%) of veterans experiencing homelessness identified as persons of color.⁹

Due to disparities in the military justice system, veterans of color are significantly more likely to experience adverse outcomes, such as less-than-honorable discharges, than their white counterparts. Service members who identified as persons of color "are substantially more likely to be investigated for misconduct and face disciplinary action than white service members" and "are roughly 2.61 times more likely to face disciplinary action through the military justice system...."¹⁰ The disproportionate rates of punishment for service members of color exists in every branch in the military. These statistics imply that racial bias, whether explicit or implicit, permeates the military justice system and disproportionately impacts veterans of color, the consequences of which can be lifelong. Veterans with bad paper discharges can, in addition to losing access to many service-connected benefits, face disadvantages in the job market and lose access to assistance designed to ease the transition to civilian life.¹¹ One study showed that some post-9/11 veterans

⁶ New York's Veterans: An In-Depth Profile, NY Health Foundation (October 2021), 3, <https://nyhealthfoundation.org/wp-content/uploads/2021/10/new-york-veterans-in-depth-profile-oct-2021.pdf>.

⁷ "NYC Veteran Demographics," City of New York, accessed July 11, 2022, <https://www1.nyc.gov/site/veterans/community/data-about-nyc-veterans.page>.

⁸ *2021 Report of the Veterans Task Force*, Legal Services Corporation (2021) [hereinafter *LSC Report*], 24, <https://lsc-live.app.box.com/s/buoeznt4t7284462luqxcvqg1p1lnatu>.

⁹ "People of Color Make Up a Disproportionate Share of the Homeless Veteran Population," National Alliance to End Homelessness, accessed August 8, 2022, <https://endhomelessness.org/resource/people-color-make-much-larger-share-homeless-veteran-population-general-veteran-population/>.

¹⁰ *LSC Report*, 24, *supra* note 9, citing Don Christensen, Col. (Ret.) & Yelena Tsilker, *Racial Disparities in Military Justice: Findings of Substantial and Persistent Racial Disparities Within the United States Military Justice System*, Protect Our Defenders (May 5, 2017), https://www.protectourdefenders.com/wp-content/uploads/2017/05/Report_20.pdf; Roxana Tiron, "Black Troops Said More Likely Than Whites to Face Discipline," *Bloomberg Government* (June 16, 2020), <https://about.bgov.com/news/black-troops-said-more-likely-than-whites-to-face-discipline/>; and Meghan Myers, "This Report Says Black and Hispanic Service Members Are More Likely to Face Trial," *Military Times* (May 31, 2019), <https://www.militarytimes.com/news/your-military/2019/05/31/this-report-says-black-and-hispanic-service-members-are-more-likely-to-face-trial/>.

¹¹ *It's Not "Quality of Life," It's "Life or Death,"* Hearing Before the House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs' Hybrid Oversight, 116th Cong. (2020) [hereinafter *Hearings*] (written testimony of Minority Veterans of America),

with bad paper discharges were twice as likely to die by suicide as those with Honorable discharges.¹²

Legal services organizations can play a critical role in helping veterans of color rectify the consequences of unjust discharges. One client, Mr. S, a Black veteran, served in the Navy from 1978 to 1989. During his time in service, he experienced pervasive racism from his fellow sailors, culminating in a life-threatening altercation. Mr. S began experiencing severe symptoms of PTSD, which would not be diagnosed until many years later, and self-medicated with drugs to numb himself from his pain. He was discharged from the military less-than-honorably due to his drug use. Mr. S came to the New York Legal Assistance Group (NYLAG) decades after his service, seeking assistance in appealing years of denials of service-connected benefits for his PTSD, which stemmed back to the racism he experienced in the service. NYLAG appealed Mr. S's case and won, increasing Mr. S's monthly income from \$879 per month to \$3,132 per month and obtaining \$8,900 in retroactive benefits.

Yet even when veterans of color receive Honorable discharges, the impact of the racism they experienced during service can stay with them for years. Veterans of color show disproportionately high levels of PTSD, even when controlling for combat exposure and military rank.¹³ These effects are compounded by the broader societal discrimination that persists in critical social sectors, including employment, housing, and health care,¹⁴ which in turn increases the risk that a veteran faces economic disadvantages and a need for civil legal services. By taking extra care to screen all clients for veteran status, legal services providers can ensure that veterans of color have access to the full range of benefits they have earned through their sacrifices to our country.

Women, Gender Diverse, and LGBTQ+ Veterans

The number of women serving in the military has increased significantly in the last half-century, growing from 2.3% in 1973¹⁵ to 17.48% in 2022.¹⁶ Today, 11% of all U.S. veterans are women,¹⁷ with 64,482 living in New York State.¹⁸ Though the military does not include data on

<https://www.congress.gov/116/meeting/house/110852/documents/HHRG-116-VR09-20200708-SD101.pdf>.

¹² M.A. Reger et al., *Risk of Suicide Among US Military Service Members Following Operation Enduring Freedom or Operation Iraqi Freedom Deployment and Separation from the US Military*, *J. Am. Med. Ass'n Psychiatry* (2015);72(6):561–569. doi:10.1001/jamapsychiatry.2014.3195.

¹³ Karin Nordstrom et al., “No Justice, No Peace: The Military’s Failure to Repair Racial Trauma of Black Veterans” (2020), 6, <https://www.columbuslegalaid.org/wp-content/uploads/2020/11/No-Justice-No-Peace.pdf>.

¹⁴ *Id.*

¹⁵ “Women Veterans Health Care,” U.S. Department of Veterans Affairs, last updated May 25, 2022, <https://www.womenshealth.va.gov/materials-and-resources/facts-and-statistics.asp>.

¹⁶ Department of Defense, Defense Manpower Data Center, *Active Duty Military Personnel by Service by Rank/Grade, June 2022*.

¹⁷ Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, *Veteran Population, National Age/Gender*.

¹⁸ *New York’s Veterans: An In-Depth Profile*, NY Health Foundation (October 2021), 3, <https://nyhealthfoundation.org/wp-content/uploads/2021/10/new-york-veterans-in-depth-profile-oct-2021.pdf>.

transgender service members in their annual Demographics Profile, it is estimated that there are more than 15,500 transgender active service members and more than 134,000 transgender veterans in the U.S.¹⁹ While women and gender diverse veterans experience many of the same service-related challenges as men, they also face unique issues that require tailored legal assistance. According to the LSC Report, women, transgender, and gender diverse veterans “are far more likely to experience MST [military sexual trauma] than cisgender men who serve.”²⁰

In FY18, an estimated 20,500 service members were sexually assaulted or raped, including 13,000 women and 7,500 men.²¹ The rate of sexual assault and rape jumped by almost 40% from FY16 to FY18, and for women the rate increased by over 50% to the highest level since 2006.²² Although COVID has delayed the latest numbers, recent reporting indicates that in FY21, nearly 36,000 service members were assaulted or raped.²³ Transgender individuals are especially vulnerable: “A 2020 study found that . . . 83.9% of transgender service members experienced sexual harassment and 30.4% experienced sexual assault.”²⁴ Service members who experience MST can suffer from long-lasting symptoms such as depression, alcohol or drug abuse, irritability, decreased self-esteem, and other physical health problems.²⁵ These consequences which are outside of a service member’s control can negatively impact their ability to serve, often resulting in less-than-honorable discharges that restrict their eligibility for benefits not only because of discharge status but because they are separated before reaching the minimum service time required for VA health care and many related benefits.

Discrimination during and after service is, regrettably, a reality for many gender-diverse and LGBTQ+ veterans. Upon separation, 1 in 10 women reported experiencing discrimination when applying for VA disability benefits.²⁶ Many veterans—an estimated 114,000 as of 2017—who served before or during the Don’t Ask Don’t Tell Era (1993–2011) were discharged due to

¹⁹ “Military & Veterans,” National Center for Transgender Equality, <https://transequality.org/issues/military-veterans>.

²⁰ *Id.* at 26, citing Ashley C. Schuyler et al., “Experiences of Sexual Harassment, Stalking, and Sexual Assault During Military Service Among LGBT and Non-LGBT Service Members,” 33(3) *J. Traumatic Stress* (June 2020): 257-266.

²¹ Department of Defense, 2018 Workplace and Gender Relations Survey of Active Duty Members (the fiscal 2018 report is the most recent complete annual report available due to delays caused by COVID), available at: https://www.sapr.mil/sites/default/files/Annex_1_2018_WGRA_Overview_Report_0.pdf.

²² Department of Defense, 2018 Workplace and Gender Relations Survey of Active Duty Members, https://www.sapr.mil/sites/default/files/Annex_1_2018_WGRA_Overview_Report_0.pdf.

²³ Baldor, Lolita C., “Reported Sexual Assaults Across US Military Increase by 13%” AP News, Aug. 31, 2022, <https://apnews.com/article/covid-health-crime-pandemics-army-62b6b37fbb992b19f0da65a3a1ba1115>.

²⁴ *LSC Report*, 26, *supra* note 9, citing Ashley C. Schuyler et al., “Experiences of Sexual Harassment, Stalking, and Sexual Assault During Military Service Among LGBT and Non-LGBT Service Members,” 33(3) *J. Traumatic Stress* (June 2020): 257-266.

²⁵ “Military Sexual Trauma,” U.S. Department of Veterans Affairs, last updated May 16, 2022, <https://www.mentalhealth.va.gov/msthome/index.asp>.

²⁶ *LSC Report*, 26, *supra* note 9, citing Lauren M. Denneson et al., “Gender Differences In The Development of Suicidal Behavior Among United States Military Veterans: A National Qualitative Study,” *Social Science & Medicine* 260 (2020), <https://doi.org/10.1016/j.socscimed.2020.113178>.

their perceived sexual orientation;²⁷ Today, veterans are encouraged to apply for a discharge review if they received bad paper discharges because of MST, PTSD, traumatic brain injury, or sexual orientation. Yet, the upgrade process is particularly arduous for veterans to navigate on their own and does not fully compensate for the past time during which those veterans were ineligible for benefits. The rates of veterans applying for discharge corrections due to discrimination related to sexual orientation and identity are low. Often, veterans negatively affected by these past policies do not want to reengage with the Department of Defense due to traumatic experiences, while others remain unaware that they can apply for discharge upgrades.

Ms. M, 61 years old, served in the U.S. Army from 1989 to 1991. While she was in the Army, Ms. M was raped by a male Specialist. As a result of this assault, she contracted a sexually transmitted infection. In addition to this traumatic event, Ms. M experienced pervasive sexual harassment throughout her years in the military. Ms. M has continually suffered from severe PTSD, anxiety, and depression as a result of her assault, leaving her unable to hold a job or have meaningful relationships with others. Ms. M came to Hofstra Law School's Robert W. Entenmann Veterans Law Clinic seeking assistance in filing for disability compensation for her mental health conditions which stem back to her experiences of military sexual trauma. In October 2021, Ms. M was awarded 100% disability compensation for her mental health, resulting in retroactive pay of over \$37,000 and monthly compensation of over \$3,100. Prior to this decision, Ms. M was living on SSI, receiving less than \$800/month.

Legal services providers must be mindful of the stigma surrounding less-than-honorable discharge statuses and the discriminatory practices that can lead to these characterizations in order to effectively represent their gender diverse and LGBTQ+ veteran clients. By understanding the circumstances that led to a veteran client's discharge, attorneys can identify potential opportunities for that client to upgrade their discharge status and obtain benefits they would not have been able to access without civil legal assistance.

Aging Veterans

Older veterans faced a wide range of legal issues during the COVID-19 pandemic that continue to persist today, particularly those pertaining to finances, nursing home care, housing subsidies, and burial benefits. Civil legal services providers can play a crucial role in combating these issues and connecting older veterans with the specialized benefits available to them. According to the U.S. Census Bureau in 2018, the median age of living veterans was 65 years.²⁸ As of 2018, slightly more than half of veterans in New York were age 65 or older.²⁹ Older veterans

²⁷ *Id.*, citing "Discharged Under DADT? Upgrade May Be Possible," *Veterans Law Group* (June 29, 2017), <https://www.veteranslaw.com/discharged-under-dadt-upgrade-possible/#:~:text=In%20order%20to%20upgrade%20your,while%20%E2%80%9Cimproper%E2%80%9D%20means%20mistaken%20or>.

²⁸ Vespa, *Those Who Served*, 8, *supra* note 4.

²⁹ U.S. Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, "Veteran population. Table 6L: VETPOP2018 Living Veterans by State, Age Group, Gender, 2018-2048,"

often have unique legal needs based on the period in which they served, and screening for veteran status when working with elderly clients allows legal services providers to connect them with the proper services. For aging veterans, there are many disabilities that are legally presumed to be service connected. Exposure to Agent Orange or ionizing radiation are examples of presumptive causes of certain disabilities that automatically entitle qualified veterans to disability benefits and specialized health care.³⁰ Familiarity with the presumptive conditions enables legal services providers to assist older veterans with their VA benefits applications and serve as a bridge for potentially life-changing compensation. Many older veterans served during periods when sexual orientation or service-connected conditions such as PTSD were grounds for a less-than-honorable discharge characterization. In such cases, legal services providers can help these veteran clients navigate the discharge upgrade process and assist them in accessing benefits.

Beyond service-connected disability benefits, many low-income older veterans may be eligible for a pension from the VA. The VA Pension provides monthly payments to wartime veterans who meet certain age or disability requirements, and who have income and net worth within certain limits. A qualified veteran in New York who is in need of the regular aid and attendance of another person will only receive \$11,136 a year from Social Security if they are receiving SSI benefits, but if they receive a VA Pension they could qualify for \$24,610 a year instead.³¹ This benefit can lift an older wartime veteran out of poverty, yet many veterans are unaware of their eligibility, as less than half of New York’s veterans are registered with the VA.³²

Another issue that predominantly impacts older veterans is the digital divide in obtaining services, especially in the wake of the COVID-19 pandemic. As a group, elderly adults fall behind when it comes to technological literacy and access to the internet. A 2019 study showed that 27% of U.S. adults over 65 do not use the internet at all, which is significantly higher than other age groups.³³ Another study showed that 75% of elderly adults needed assistance setting up their electronic devices, and one-third “also said they were only a little or not at all confident in their ability to use electronics and to navigate the web.”³⁴ This divide was only exacerbated as legal services practices transitioned to remote work during the pandemic, and many continue to operate

https://www.va.gov/vetdata/veteran_population.asp.

³⁰ “Presumptive Disability Benefits,” U.S. Department of Veterans Affairs, Veterans Benefits Administration, last updated September 2021, <https://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/presumption.pdf>.

³¹ 38 U.S.C. 1521(a), (d). Current rates available at: <https://www.va.gov/pension/veterans-pension-rates/>.

³² New York’s Veterans: An In-Depth Profile, NYS Health Foundation (October 2021), 18, <https://nyhealthfoundation.org/wp-content/uploads/2021/10/new-york-veterans-in-depth-profile-oct-2021.pdf>.

³³ Susan Nash, “The Pandemic has Accelerated the Need to Close the Digital Divide for Older Adults,” *Stanford Center on Longevity*, accessed on July 7, 2022, <https://longevity.stanford.edu/the-pandemic-has-accelerated-the-need-to-close-the-digital-divide-for-older-adults/>.

³⁴ Kate Congar and Erin Griffith, “As Life Moves Online, an Older Generation Faces a Digital Divide,” *New York Times*, last updated March 28, 2020, <https://www.nytimes.com/2020/03/27/technology/virus-older-generation-digital-divide.html>.

remotely today. The inability to access these virtual services is especially problematic for disabled veterans, who may have already faced challenges leaving their homes to seek out services.

Legal services providers must find ways to reach elderly veterans to ensure they do not feel isolated when dealing with complex legal issues. By conducting outreach and building partnerships with organizations that work with older veterans in other social sectors, such as VA medical facilities, legal services providers can better connect with veterans who may not have the technical skills needed to seek help on their own. Legal services providers can also consider providing temporary technological assistance, such as loaning equipment or offering instructions for basic online tasks, to elderly veteran clients to facilitate their cases.

Veterans with Disabilities

As of August 2021, 27% of veterans nationwide had a service-related disability.³⁵ This number was even higher among post-9/11 veterans, with 44% of them having a disability that stems back to their military service.³⁶ These figures only account for reported disabilities; many estimates suggest that “between 30 and 50 percent of veterans have some type of service-connected health issue that entitles them to VA Benefits.”³⁷ Despite this, less than 17% of veterans in New York State receive either disability compensation benefits or pension benefits.³⁸ In New York City, the percentage drops to 15.5%. This is in stark contrast to other states with large veteran populations, such as California (25%), Texas (29%), and Florida (24%).³⁹ Compounding this issue is the fact that New York veterans have lower incomes than the national average (for those veterans making less than \$100k annually), meaning that they are often the ones most in need of financial assistance and who would benefit most from disability compensation.⁴⁰ The recent signing of the PACT Act by President Biden, opening the door to VA benefits for thousands of veterans exposed to burn pits during service in the Middle East, only increases the number of veterans in need of assistance to file claims or appeals. Legal services can play a crucial role in bridging this gap to ensure that New York veterans are receiving the compensation they earned.

However, veterans who *do* obtain disability compensation from the VA often find themselves in another bind: they are ineligible for free or low-cost legal services. Most legal services organizations cap their income limits at 200% of the federal poverty level (FPL)—

³⁵ “Employment Situation of Veterans: 2020,” U.S. Department of Labor, Bureau of Labor Statistics (April 21, 2022), 4, <https://www.bls.gov/news.release/pdf/vet.pdf>.

³⁶ *Id.* at 1.

³⁷ “Report By The Military And Veterans Affairs Committee, The Disability Law Committee, And The Social Welfare Law 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,” New York City Bar (May 22, 2019), 3, <https://s3.amazonaws.com/documents.nycbar.org/files/2019531-PublicInterestVeteransLawPractitioners.pdf>.

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ *Id.* at 3.

currently \$27,180 per year for a household of one. Additionally, right-to-counsel initiatives in New York State currently limit access to free representation to those making 250% or below the FPL.⁴¹ Yet veterans with no dependents who receive a 100% rating for their service-related disabilities, meaning they are disabled at the highest level related to their disability, receive \$39,984.72 per year in benefits. These veterans sacrificed in service to our country, yet they are often precluded from obtaining free legal assistance, despite the fact that they are the ones most in need of legal services. This discrepancy makes it far more likely that disabled veterans will be unable to navigate their complex legal challenges due to a lack of legal representation.

We therefore encourage legal services providers, as well as private and public funders of legal services, to adjust their client eligibility criteria to be more inclusive of veterans with disabilities. Likewise, lawmakers and government agencies should consider updating their financial eligibility standards in order to ensure that disabled, low-income veterans have access to assigned counsel. A possible solution is to explicitly exclude VA disability compensation and pension benefits from the calculation of a veteran's net income when determining eligibility for legal services. Legal services providers could also raise such income thresholds for veteran clients to better account for VA benefit income. In order to achieve any of these solutions, universal screening for military service must be implemented by legal services organizations.

One bill currently pending in the New York State legislature would provide right-to-counsel benefits in civil matters to veterans making or receiving benefits equal to 400% or below the FPL.⁴² We believe such a policy applied broadly to veterans in all civil legal services programs would ensure that low-income, disabled veterans who are most in need of legal assistance are not shut out because of their disability benefits.

Training Legal Services Attorneys

As legal services attorneys who focus primarily on veterans' issues, we often find ourselves in the position of educating lawyers and social services advocates on how to address the unique legal problems that veterans face. We believe that regular education on veterans law and best practices for working with veteran clients is critical to ensuring that civil legal services providers can adequately meet their diverse needs. New York's current requirements for Continuing Legal Education (CLE) dictate that experienced attorneys must earn at least one credit hour per two-year period that is in the Diversity, Inclusion, and Elimination of Bias category. Military cultural competency training falls squarely into this category and is, in our opinion, an essential course that all legal services attorneys should take early in their careers and periodically thereafter. To broaden awareness of veterans as a diverse population with special needs and encourage attorneys to take

⁴¹ "Standards for Determining Financial Eligibility for Assigned Counsel," New York State Office of Indigent Legal Services (February 16, 2021), 26, <https://www.ils.ny.gov/files/Eligibility%20Standards%20Final%20021621.pdf>.

⁴² See N.Y. Leg. Assemb. A3306, Reg. Sess. 2020–2021 (2021), <https://www.nysenate.gov/legislation/bills/2021/A3306>.

CLE courses on veterans law issues, we urge the New York State CLE Board to update its CLE Program Rules⁴³ to list “military service” as one of the explicit characteristics covered under the Diversity, Inclusion, and Elimination of Bias category.

Legal Advocacy and Legislative Action

Thanks to the work of veterans, legal services providers, and veterans’ advocates, there has been a strong push in recent years to root out discriminatory practices in the military and expand access-to-justice initiatives that ensure veterans can access the benefits they should be rightfully entitled to. Notably, the Veterans Legal Services Clinic at Yale Law School has litigated a series of lawsuits against the Army,⁴⁴ Navy,⁴⁵ and Air Force⁴⁶ for not providing veterans due consideration under the U.S. Department of Defense’s 2014 “Hagel Memo”⁴⁷ when reviewing discharge upgrade applications. The Hagel Memo, much of which is now codified in federal law, set a “liberal consideration” standard that requires military discharge review boards to broadly consider whether non-premeditated misconduct could have been caused by PTSD. Despite subsequent memos that expanded consideration of mitigating factors in a discharge, it was found through Freedom of Information Act requests that discharge review boards had not been implementing the new liberal standard consistently and therefore violated the Due Process Clause. In particular, the boards have not followed the 2017 “Kurta Memo”⁴⁸ that requires liberal consideration be given that *any* mental health conditions, traumatic brain injury, sexual assault, or sexual harassment may have contributed to the conduct leading to discharge. Across three separate cases, the Yale clinic was able to negotiate settlements that, among other accomplishments, allow certain veterans to receive automatic reconsideration of their discharge status; clarify the liberal consideration standard used by discharge review boards; and enforce the standard to include other conditions, as listed in the “Kurta Memo”.

While the recent class action cases brought by the Yale Clinic represent positive steps forward for veterans who wrongfully received less-than-honorable discharge statuses, there are still limitations that policymakers and veterans’ advocates must work to address. Automatic discharge reconsideration, for example, only applies to veterans who received denials within a certain

⁴³ See CLE Program Rules, Joint Rules of the Appellate Divisions, 22 NYCRR § 1500.2(f) (2018), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/programrules.pdf>.

⁴⁴ See “Kennedy v. McCarthy,” *Yale Law School*, <https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/veterans-legal-services-clinic/kennedy-v-mccarthy>.

⁴⁵ See “Manker v. Del Toro,” *Yale Law School*, <https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/veterans-legal-services-clinic/manker-v-del-toro>.

⁴⁶ See “Johnson v. Kendall,” *Yale Law School*, <https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/veterans-legal-services-clinic/johnson-v-kendall>.

⁴⁷ See Memorandum from Chuck Hagel, Sec’t of Def. to Secretaries of the Military Dep’ts, (Sept. 3, 2014); <https://www.secnav.navy.mil/mra/bcnr/Documents/HagelMemo.pdf>.

⁴⁸ See Memorandum from A.M. Kurta, Performing the Duties of the Under Sec’t of Def. to Secretaries of the Military Dep’ts, (Aug. 25, 2017); <https://dod.defense.gov/Portals/1/Documents/pubs/Clarifying-Guidance-to-Military-Discharge-Review-Boards.pdf>.

timeframe. Anecdotal evidence suggests that there have been implementation issues, with many veterans receiving time-sensitive notices late. Additionally, veterans whose discharge statuses are updated through this process will likely not receive retroactive benefits, meaning that these veterans will not be compensated for incurred costs, such as loss of income or treatment of disabilities from the time before their reconsideration requests are approved. Lawmakers must recognize the disparities that still exist for veterans attempting to access service-connected benefits and codify equitable means of filling these justice gaps.

We also want to highlight that governmental and legislative efforts to expand access to justice for veterans in New York State have been substantial in recent years and remain ongoing. The 2019 New York Restoration of Honor Act broadened access to state benefits for veterans with an Other-Than-Honorable or General Under Honorable Conditions discharges if their discharge was a result of PTSD, TBI, MST, sexual orientation, or gender identity.⁴⁹ In 2016, the New York City Department of Veterans' Services was established as a city-level agency dedicated to providing essential services and programs to veterans and their families.⁵⁰ The state-level Division of Veterans' Services, meanwhile, is set to be upgraded to a department-level agency that will expand access to key resources for veterans beginning later this year.⁵¹ We applaud these recent legislative efforts and believe that legal services providers can continue to serve as the bridge connecting policy and practice, making it possible for low-income veterans to obtain services for legal issues they would have had difficulty navigating on their own.

Other Critical Needs

There are various other important fields in which veterans currently have limited access to legal services. Family law issues, particularly child support, remain some of the top ten unmet needs for veterans, according to the VA's 2021 CHALENG report, an annual survey measuring the needs of homeless veterans.⁵² In New York City, roughly 80% or more of litigants in family court are unrepresented.⁵³ Without adequate representation in this complex area, many veterans are not aware of their rights and therefore do not perform legal actions that are in their best interest.

⁴⁹ "Restoration of Honor Act," New York State Division of Veterans' Services, accessed July 7, 2022, <https://veterans.ny.gov/content/restoration-honor-act>.

⁵⁰ "About," NYC Department of Veterans' Services, accessed July 7, 2022, <https://www1.nyc.gov/site/veterans/about/about.page#:~:text=To%20honor%20the%20sacrifice%20of,serving%20Veterans%20and%20their%20families>.

⁵¹ Kate Lisa, "Current director to lead new state Veterans Department in New York," *Spectrum News 1* (May 23, 2022), <https://spectrumlocalnews.com/nys/central-ny/politics/2022/05/13/current-director-to-lead-new-state-veterans-department>.

⁵² "Community Homelessness Assessment, Local Education and Networking Groups (CHALENG)," U.S. Department of Veterans Affairs (April 2022), 1, https://www.va.gov/HOMELESS/docs/chaleng/CHALENG_2022_Fact_Sheet.pdf.

⁵³ "The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants" The New York City Family Court COVID Work Group, a Joint Project of the New York City Bar Association and The Fund for Modern Courts (January 2022), 4, <http://moderncourts.org/wp-content/uploads/2022/02/NY-Family-Court-Report-1-22-2022.pdf>.

Military families often face moves across the country, making child support orders and enforcement confusing. Sometimes a veteran may have to leave a job due to a worsening disability, yet may not be aware of the need to modify their child support orders before costly interest accrues on arrears. Child support arrears can accrue significantly over time and throughout the timeline of a case unbeknownst to the client, the realization of which can often be paralyzing—filing for modification as soon as a financial change makes the current cost of child support unaffordable would prevent undue hardship.

As noted previously, currently pending in the state legislature is a bill that would provide right-to-counsel services in civil matters for veterans whose incomes are at or below 400% of the FPL.⁵⁴ The bill aims to address the fact that today there is generally no right to court-appointed counsel for child support matters in New York State, aside from respondents who are facing incarceration in child support violation cases. Setting the financial eligibility threshold for veterans to obtain counsel is 400% under this new law would allow them to deservedly receive life-changing assistance in resolving their legal issues and should be applied broadly to veterans in all civil legal cases.

Evictions are another key area in which veterans are woefully underrepresented, a fact that has been especially problematic given the increase in eviction proceedings due to the COVID-19 pandemic. Veterans make up a disproportionate share of the population experiencing homelessness in the United States.⁵⁵ The most recent estimates for the total population of veterans who are unhoused took place before the pandemic and the numbers had already been trending upward. A conservative estimate puts veteran homelessness at 37,000 veterans and growing.⁵⁶

It is critical that veterans are made aware of the programs available to them, such as HUD-VASH (Section 8 vouchers with case management services) and Supportive Services for Veteran Families, to help them find stable housing or maintain their current home in the face of a housing emergency. Legal services providers can play a crucial role by collaborating with these programs and preventing evictions. To address the lack of representation in eviction proceedings, there is a bill currently pending in the New York State Senate that would establish a New York State Office of Civil Representation and expand access to legal services in housing court.⁵⁷ Proposals like this that aim to meet the needs of low-income veterans make it easier for veterans to access the benefits they earned. Legal services attorneys must also do their part by advocating for their veteran clients and using their platforms to voice the importance of comprehensive policies that benefit the veterans they serve.

⁵⁴ See N.Y. Leg. Assemb. A3306, *supra* note 40.

⁵⁵ *LSC Report, 22–23, supra* note 9.

⁵⁶ See “Everyone Counts in the Effort to End Veteran Homelessness” U.S. Department of Veterans Affairs, https://www.va.gov/homeless/pit_count.asp

⁵⁷ See N.Y. Sen. S6678C, Reg. Sess. 2021–2022 (2021), <https://www.nysenate.gov/legislation/bills/2021/S6678>.

Conclusion

On behalf of the following members of the New York Veterans Law Working Group, we encourage the funders and policymakers in New York State, including the members of the New York State Permanent Commission on Access to Justice, to ensure appropriate resources are dedicated to legal service providers focused on assisting New York's increasingly diverse veteran community. Individuals who sacrificed on behalf of our country deserve the benefits, resources, and assistance they need—comprehensive, culturally sensitive legal services are essential to that mission.

Respectfully,



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Legal Aid Society of Northeastern New York

Legal Information for Families Today (LIFT)

Legal Services of the Hudson Valley

Legal Services NYC

Nassau Suffolk Law Services

New York Legal Assistance Group (NYLAG)

Veterans Advocacy Project

Volunteers of Legal Service (VOLS)