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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 18, 2023

Statement from members of the New York Veteran Law Working Group

Dear Commission Members,

On behalf of the New York Veterans Law Working Group (“Working Group”), we are writing to advocate for robust support of civil legal services funding to address the unique challenges faced by low-income veterans, military service members, and their families in New York State. We are honored to be able to submit this statement to the New York State Permanent Commission on Access to Justice for consideration in the Chief Judge’s 2023 Hearing on Civil Legal Services.

The Working Group is composed of legal service advocates from civil legal organizations and law-school affiliated entities across New York State with practices focused on serving veterans, military service members, and their families. The Working Group convenes on a regular basis to collaborate on solutions to civil legal issues facing the veteran community. The group’s members provide civil legal services to veterans in a broad array of practice areas, including discharge upgrades, eviction and foreclosure prevention, public benefits access, claims before the United States Department of Veterans Affairs (VA), estate planning, family, and health law matters. Some advocates specialize in serving particular populations, such as women, older adults, or LGBTQ+ veterans. The Working Group aims to advocate for increased veteran-focused 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 Greer, 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 Ferrick Center for Social Justice and its Veterans Rights Project convened the Working Group in 2019 and provides logistical support.

U.S. Department of Veterans Affairs New Funding Recognizes Impact of Civil Legal Services for Veterans, But Falls Short of True Need

In 2023, the United States Department of Veterans Affairs (VA) launched its Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grants (LSV-H), a first-of-its-kind direct legal services funding from the Department of Veterans Affairs. The funding is part of the VA's continued homelessness prevention efforts, which have found the inability to access civil legal assistance as a critical factor in veteran homelessness.

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. The 2022 CHALENG Survey found that legal services accounted for eight of the top ten unmet needs for homeless veterans. This list included: (1) criminal record expungement; (2) credit issues/debt collection; (3) court fees/court fines; (6) discharge upgrade appeals; (7) family law; (8) child support issues; (9) eviction and foreclosure; and (10) driver's license restoration. These results, which underscore the importance of civil legal assistance, have been consistent across the twenty years the CHALENG Survey has taken place.

The VA's LSV-H funding is significant, as it will provide crucial support to legal services organizations that have struggled to keep up with demand and will allow new organizations to increase their capacity to assist homeless veterans. However, LSV-H provides only \$11.5 million dollars for its nationwide initiative. According to the United States Census Bureau there were over 16.5 million veterans in 2021. While only a fraction of these veterans qualify for free legal services, it is clear that LSV-H funding will only meet a small portion of the civil legal services needs in the veteran community. In addition, the program also involves eligibility limitations, including those related to military discharge status and housing status, that will continue to prevent many low-income veterans from accessing the legal services they need.

New York has always led when it has come to initiatives supporting the military and veteran community. New York's commitment to its veterans is evident in the creation of Veterans Treatment Courts, which ensure justice-involved veterans receive the mental health and substance use treatment they deserve, and the enactment of the Restoration of Honor Act, which recognizes the role of sexual orientation discrimination and mental health symptoms on less-than-honorable discharge status.

The VA's decision to fund legal services should be viewed as confirmation of the immense need for civil legal assistance and its important impact in helping veterans and

preventing homelessness. New York should look to find ways to reinforce this effort with additional and more flexible funding, to ensure our most vulnerable veterans are not left behind.

Access to Veteran-Focused Legal Services is Life Changing for Low- and Moderate-Income Veterans, and Simultaneously Provides Support to the Overburdened Court System

The impact of free legal service providers with expertise in veteran benefits and veteran focused resources extends beyond individual representation and into the court system as a whole. Veterans Treatment Courts (“VTCs”) are a tremendous example of how cultural understanding and resource connection can be incorporated into the legal system to positively impact a veteran’s life. VTCs live up to their name of problem-solving courts, by connecting struggling veterans to substance abuse and mental health treatment, health care, housing, and employment services. Investment in experts allows participants to take advantage of the numerous federal resources that can help them attain long-term stability and security.

Similar investment in experts across other civil court systems can be just as impactful. For example, a veteran-focused legal services provider representing a veteran in an eviction matter will be knowledgeable about programs such as HUD-VASH Section 8 vouchers, Supportive Services for Veterans Families (“SSVF”) grants, the Homeless Providers Grant and Per Diem Program, and other programs that can enable their clients to avoid eviction and remain stably housed or find new housing if evicted. Civil legal services providers who do not screen for military service and do not have staff trained in veteran focused benefits and services may be unaware of these programs.

Areas of Need

Legal Assistance with VA Benefits Increases Veteran Household Incomes and Reduces Local and State Expenditures of Public Benefits

In 2019, the New York City Bar issued a report concerning inadequate financial support for legal services in connection with VA disability benefits. The report highlighted the fact that despite having the fifth largest veteran population in the country, New York veterans lagged far behind veterans in other states in benefits received from the VA. Per the VA’s own reporting, less than 17% of veteran’s statewide and only 15.5% of NYC veterans received either VA Disability Compensation or Pension benefits, compared to an estimated 23 to 24% of veterans nationally. If New York were to reach the 23 to 24% national average, it could mean more than fifty thousand additional New York veterans and their families would be receiving VA benefits worth tens of millions of dollars. This monetary compensation not only recognizes the sacrifices our veterans have made, but also enhances stability in our communities and fuels the state’s economy.

The inability to access these earned benefits drive many of the other legal concerns of low-income veterans. Rental arrears lead to eviction proceedings in which veterans often lack legal representation and are ordered to leave their home; insufficient income causes missed child support payments and potentially dire enforcement consequences including money judgments, driver's license revocation, garnishment of wages/benefits such as VA and Social Security benefits, and incarceration; and past-due bills can lead to harassment by debt collectors and civil litigation resulting in monetary judgments and ruined credit. Without the resources to afford legal assistance, these veterans must rely on a patchwork of civil legal services organizations to educate them about and protect their housing rights, their parental rights, and even their food security, or go it alone. However, without the ability of these organizations to invest in experts who understand the different federal benefits and resources available to the veteran community and who can help clients through the complex application and appeals processes, the veteran clients continue to remain more vulnerable to additional legal action. Robust civil legal services would ensure that our state's veterans are equipped to navigate the complex VA application and appeals processes and secure the benefits to which they are entitled. This would lead to improved outcomes for veterans and avoidance of the above-referenced corollary legal concerns.

The VA CHALENG Survey confoundingly does not categorize VA benefit access under the umbrella of legal services. In keeping with this misguided position, VA benefit applications and appeals routinely are not considered an issue that requires the assistance of an attorney. Historically, the VA benefits system operated without lawyers and, until 1989, had no mechanism by which to legally challenge VA benefit decisions. Today the landscape is markedly different. Attorneys are just as critical in the VA benefits system as in other federal administrative practices, like Immigration and Social Security. By allowing New York veterans to struggle to learn about and access benefits on their own, New York State will continue to leave veterans behind their counterparts in other states and have to pay the cost directly with public benefits and indirectly with overburdened courts.

New York already has an excellent model to address the gap and to assist New Yorkers to obtain federal benefits from the VA. The Disability Advocate Program ("DAP") has provided grants to not-for-profit legal services corporations and not-for-profit agencies who assist with the Social Security benefit process. DAP has proven extremely successful, connecting New Yorkers to federal benefits and reducing the burden on local taxpayers by removing beneficiaries from State and local benefit programs and boosting local economies with the federal dollars.

A 100% service-connected disabled veteran currently receives \$3,621/month. This monthly compensation would be in addition to any entitlement to Social Security benefits the veteran may have. New York has the blueprint in place to make sure the federal government is paying their share and that veterans are being fully compensated. Funds exist to support our state's veterans and their family members; what is needed are veterans-focused civil legal

services resources to ensure our veterans are fully and comprehensively accessing the benefits they have honorably earned.

Legal Assistance with Medical Debt and Other Debt Collection Matters Protects Veterans' Resources

A veteran who received service-connected disability benefits from the VA with a 100% disability rating for PTSD reached out to the New York Legal Assistance Group (NYLAG) this past year because his bank account was suddenly frozen. When he spoke to his bank about the issue, he learned that he had been sued on a purported debt from a cardiologist's office in 2015. The veteran was unaware of the lawsuit and did not believe he had incurred the underlying debt. The bank account that was frozen contained only Social Security and VA disability benefits. With NYLAG's help, the veteran was able to invoke his rights under the Exempt Income Protection Act (EIPA) and unfreeze his bank account, so he could access the benefits he relies on for daily living expenses. NYLAG was able to act fast and prevent the veteran from falling behind on any bills or rent. Even small amounts of medical debt can have a major impact on veterans with fixed income, and the complexity of the issues make quick access to legal assistance crucial, particularly for veterans with severe disabilities like PTSD.

Housing and Benefits Representation Prevents Veteran Homelessness

Evictions are another key area in which veterans are woefully underrepresented. Veterans also face housing issues disproportionately compared to the civilian population. While veterans account for 5% of the U.S. population, they comprise 11% of adults experiencing homelessness in the U.S. today, and nearly 40,000 veterans are unhoused on any given day. It is noteworthy the racial disparities among veterans. In 2018, just 18.4% of the total veteran population nationwide identified as BIPOC (Black Indigenous People of Color) but nearly half (43.2%) of veterans experiencing homelessness identified as BIPOC. Sadly, a significant number of homeless veterans are BIPOC and lack access to civil legal services.¹

A 60-year-old veteran residing in Manhattan fell behind on rent and utility payments due to loss of employment during the pandemic. He applied for New York State's Emergency Rental Assistance Program (ERAP), but his application was incorrectly denied by the Office of Temporary and Disability Assistance (OTDA). OTDA erroneously stated in their denial that the county he resided in did not participate in the ERAP program. When the veteran contacted OTDA to point out their error, he was told that the only way to challenge the denial was to file an Article 78 proceeding. The veteran had no idea what that was or how to go about filing the case, so he began to reach out to legal services offices. The Volunteers of Legal Service's (VOLS) Veterans Initiative, along with pro bono co-counsel, filed an Article 78 challenging this

¹ <https://endhomelessness.org/resource/people-color-make-much-larger-share-homeless-veteran-population-general-veteran-population/>

erroneous denial, asking the Court to order arrears payments and to stay the Housing Court proceedings so the veteran would not be evicted while this case was pending. After being called out on their error, OTDA paid over \$14,000 towards both his rent arrears and utility arrears effectively preventing his eviction. Since the case was filed, the veteran was found to be 100% service connected disabled by the VA and now has stable income to be secure in his housing.

Family Court Representation Protects Veterans's Parental Rights

Family law encompasses a wide variety of some of the most urgent and deeply sensitive issues in a person's life, such as paternity, child support, custody and visitation, and domestic violence. Veterans and servicemembers encounter family law issues much as others do, but there are unique aspects to their situations and laws that impact the process and results for them. For example, VA benefits should generally be protected from state child support garnishment, though there is a federal administrative process through the VA called "apportionment" where a dependent can get support via the veteran's benefits. Further, the need for assistance in this area by homeless veterans, particularly surrounding child support, touches on half of the legal services mentioned in the top unmet needs in the 2022 CHALENG Survey (e.g., unpaid child support can lead to driver's license revocation, debt collection efforts, and bad credit).

These family law issues are largely addressed in New York State's family courts, which remain overburdened and underfunded, resulting in numerous cases not being heard for months. These delays are extremely consequential when a veteran's benefits are being garnished at a rate they cannot afford or should not have to pay. Child support laws are fairly rigid and administrative options available through the child support office are very limited unless the parent is able to pay the child support arrears. This can be crippling for veterans who are also struggling with other aspects of having served in the military.

Brian G. had a child support order entered against him for his two children after he had served in the military. This order was based on when he was able to work, but a few years later, he was diagnosed with PTSD and his experience of that condition made it too challenging to be around and interact with others in a work environment. He spent months in a lockdown PTSD facility and multiple other stints in care as well. All the while, the child support order was accruing arrears and he now owes over \$32,000. A social worker was supposed to file a child support modification petition for him in the past but did not. Brian has been trying to get more benefits from the VA to better support his children, but the mother will not provide their information to him. He is supplementing his benefits with public assistance and food stamps, but he still cannot afford child support and his other expenses. With the assistance of legal assistance from an attorney with Family Legal Care, Brian was able to file child support modification and visitation modification petitions to hopefully lower his child support obligation and arrears, visit with his children, and get the information he needs to apply for additional VA benefits.

Conclusion

On behalf of the following members of the New York Veterans Law Working Group, we encourage policymakers in New York State, including the members of the New York State Permanent Commission on Access to Justice, to support funding to legal service providers focused on assisting New York's military and veteran population.

The VA's dedication of resources to help homeless veterans should be duly noted and deeply appreciated and should serve as a catalyst for New York to take additional steps in the form of enhanced civil legal services for veterans, active military service members, and their families that will make a deep and lasting impact in the community. Supportive funding to help with the mission of homeless and at-risk veterans, implementation of programs to connect veterans to their federal benefits, and resources within existing civil court systems to assist veterans involved, all show dedication to the individuals who sacrificed on behalf of our country at the time they are most at-need. Comprehensive, culturally sensitive, veteran focused civil legal services can make all the difference.

Respectfully,



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