

September 6, 2024

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

The Chief Judge's 2024 Hearing on Civil Legal Services in New York

September 16, 2024

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 2024 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 Feerick Center for Social Justice and its Veterans Rights Project convened the Working Group in 2019 and provides logistical support.

The Unmet Legal Needs of Veterans

Each year since 1994, the United States Department of Veterans Affairs (VA) conducts a survey in which participants rank the needs of homeless veterans in their community. The Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) Survey lists out both the met needs and the unmet needs of the most vulnerable veterans and breaks down those results by veterans answering the survey and providers answering the survey.¹

The most recent survey's results were published in October 2023 and paint a troubling picture with respect to the unmet legal needs of veterans. The veterans who responded to the survey reported that 8 out of 10 of the highest unmet needs of veterans were legal in nature. These include legal assistance for credit issues/debt collection; legal assistance to expunge a criminal record; family law (i.e., divorce, child custody); legal assistance for child support issues; discharge upgrade appeals; legal assistance for outstanding warrants and fines; legal assistance to help restore a driver's license; and domestic violence/protection orders. The providers who responded to the survey reported that 5 out of the 10 highest unmet needs of veterans were legal in nature. They include family law (i.e., divorce, child custody); legal assistance for credit issues/debt collection; legal assistance for child support issues; legal assistance to expunge a criminal record; and legal assistance for outstanding warrants and fines.

According to the New York Health Foundation, New York is home to over 790,000 veterans and has the nation's fifth largest veteran population. Slightly more than half of veterans in New York were 65 or older. In their study of New York's veteran population they found that New York's veterans have lower family incomes than nonveterans and a substantially larger population of veterans compared with nonveterans who identified themselves as having a disability.²

The Need for Veteran Focused Legal Services Programs

The compelling need for veteran focused legal services programs and veterans focused legal clinics in New York State law schools are justified for two reasons: 1) the imperative to provide services that incorporate military and veteran cultural competence; and 2) the legal expertise needed to competently provide civil legal services to veterans.

¹ https://www.va.gov/HOMELESS/docs/CHALENG_2023_FACT_SHEET.pdf

² <https://nyhealthfoundation.org/wp-content/uploads/2021/10/new-york-veterans-in-depth-profile-oct-2021.pdf>

Military and Veteran Cultural Competency

Cultural competency involves a level of familiarity with military and veteran culture along with a degree of comfort in working with military veterans and their families. 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.

It is also important for legal services attorneys to recognize the unique experiences of BIPOC and women veterans. Although Black veterans account for just 12% of the veteran population, they represent one third of homeless veterans.³ BIPOC service members are more likely than their white service members to face military justice or disciplinary action.⁴ Black veterans and Latinx veterans are more likely to be discharged with less than honorable status. Accordingly, this less than honorable, or "bad paper", largely excludes them from a variety of VA services. These veterans with less-than-honorable discharges are at high risk for homelessness. Women veterans face homelessness at especially high rates—while the rate of total veteran homelessness decreased from 2020 to 2023, the rate of homelessness among women veterans increased by nearly 24%.⁵ Often veterans experiencing domestic violence have to choose between being unhoused or being housed and staying with an abusive partner. Women veterans experience disproportionately high rates of sexual assault in the military, as do LGBTQ veterans. Due to decades of discriminatory policies against LGBTQ servicemembers, from October 1, 1980, to September 20, 2011, over 35,000 individuals were discharged due to real or perceived homosexuality. Of these individuals, 81% received a less than honorable discharge.⁶ While these veterans can now apply to have these records corrected, many are unaware of their rights and are unable to receive the necessary legal services to assist with these cases.

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," or 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

³ <https://www.va.gov/HOMELESS/docs/Newsletter-Feb-2021-508.pdf>

⁴ https://www.protectourdefenders.com/wp-content/uploads/2017/05/Report_20.pdf

⁵ <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>

⁶ <https://www.cbsnews.com/news/military-gay-lesbian-service-members-denied-honorable-discharges/>

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 accepting in lieu of court-martial. These discharge statuses may 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.

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

Veteran Specific Legal Expertise

The benefits available to veterans through the VA and other programs are extensive and often life changing. They include, among others, disability compensation for service-connected injuries, benefits for low-income wartime veterans disabled through means other than their military service, housing subsidies, VA-sponsored health care, education benefits, and employment readiness assistance. Veterans’ 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 programs who are unfamiliar with these programs and benefits can often miss a solution to another legal issue. Providers with expertise in veterans practice and services 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.

For example, the VA funded Supportive Services for Veterans Families (SSVF) program is an effective tool to combat veteran homelessness. For very low-income veterans, SSVF provides case management and supportive services to prevent the imminent loss of a veteran's home or identify a new, more suitable housing situation for the individual and their family; or to rapidly re-house veterans and their families who are homeless and might remain homeless without this assistance. Qualified veterans may receive grants for rental arrears, moving expenses, or furniture and other household items when establishing a new home after a period of homelessness. Unfortunately, many, if not most, tenant attorneys who do not have training in veterans' benefits are unfamiliar with this program, and as a result, a veteran may end up homeless who otherwise would remain housed.

Additionally, 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 \$12,360 a year from Social Security if they are receiving SSI benefits, but if they receive a VA Pension, they could qualify for \$27,609 a year instead. 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, and many VA providers are unaware of the specific eligibility requirements of this benefit. A legal services provider without proper training and who is not properly screening their clients for military service and VA benefits eligibility can easily miss the opportunity to connect their client with this critical, life-changing benefit.

Beyond familiarity with the benefits available to qualified veterans, the VA requires all attorneys handling veterans' disability benefits claims to be accredited by the VA. In order to gain accreditation, attorneys must apply and be approved by the VA's Office of General Counsel and regularly complete approved CLE courses to maintain their accreditation status. In our experience, it is rare that legal services attorneys, even those who specialize in disability law, apply for and gain accreditation to assist clients with VA claims.

New York State Lacks Sufficient Civil Legal Services Programs Focused on Veterans

Despite having the fifth largest veteran population in the country, New York State does not have adequate veteran focused civil legal services programs to serve our veterans' needs. Many areas of the state have no veteran-focused free civil legal services. While in many parts of the country, law school veterans' clinics provide an important supplement to the services provided by traditional legal services offices, New York's law schools do not play as robust a role.

Veteran Focused Free Civil Legal Services are Unable to Meet the Needs of All Veterans

Currently, the majority of veterans legal services in New York exist through non-profit legal organizations, which operate their programs through various grants provided by private foundations, New York City, and the federal government. However, the current legal services landscape fails to meet the vast needs of the state's veterans. In many areas of the state, only one or a small handful of organizations have a dedicated attorney serving the legal needs of veterans, and in some areas, there are none. For example, in Albany County, there are no non-profit legal services organizations that have a staff attorney dedicated to veterans' legal needs. Erie county, with the second largest veteran population in the state (59,000 veterans as of a 2021 report),⁷ has only one such organization.

The Role Law Schools Can Play

Law schools can play a vital role in filling in the gaps where non-profit legal services cannot. Veterans law clinics across the country serve veterans on an array of legal issues—from veteran-specific concerns such as VA benefits and discharge upgrades, to housing matters, to criminal law. Oftentimes, these clinics fill a gap in services where non-profits have been unable to meet the needs of the population. For example, Long Island has the largest population of veterans in New York State, and the tenth largest veteran population in the country, but there are only two organizations on the Island providing free, veteran-focused legal services. Yet the need for assistance is far greater than one organization can address. Law school veterans' clinics, such as the Robert W. Entenmann Veterans Law Clinic at Hofstra Law School, are able to expand the availability of free legal representation to veterans in this area.

Law school clinics tend to function in two main ways—as in-house clinics, where the law school clinic is a legal entity that takes on its own clients for representation, or as hybrid

⁷ <https://nyhealthfoundation.org/wp-content/uploads/2021/10/new-york-veterans-in-depth-profile-oct-2021.pdf>

clinics, where the law school clinic partners with a non-profit organization and students work on cases that the non-profit has chosen to represent. In-house clinics are taught by full-time or visiting faculty, whereas hybrid clinics are taught by adjunct professors. The investment by a law school into the creation of an in-house clinic is a demonstration of the school's ongoing commitment to the work of the clinic.

Not only do law school clinics provide free, quality legal representation to underrepresented groups, but they also play a crucial role in shaping the future generation of lawyers. Law students who are exposed to the unique experiences and legal needs of veterans are far more likely to either dedicate their careers to helping veterans, or at the very least, find ways to incorporate pro bono work for veterans into their eventual practices.

In 2022, the New York State Department of Veterans' Services announced that four New York State law schools would receive "Justice for Heroes" grants, providing much-needed funding to law schools offering innovative collaborative programs to assist veterans, service members, and their family members with previously unmet legal needs. Albany Law School, the Maurice A. Deane School of Law at Hofstra University, New York Law School, and the University at Buffalo School of Law each received \$50,000 from New York State to establish or enhance experiential legal education initiatives that help bridge the justice gap confronting many individuals who have served or are serving in the military.

Despite this, New York State has lagged behind others in the country when it comes to supporting law school veterans' clinics. Across the State, only three legal clinics operate as full in-house legal clinics—the Robert W. Entenmann Veterans Law Clinic (Hofstra); the Cornell Law School Veterans Law Practicum, and the Betty and Michael D. Wohl Veterans Legal Clinic (Syracuse).⁸ The other three clinics, operating at Brooklyn, Columbia, and New York Law School, all operate under a hybrid model, partnering with non-profit legal services organizations (Veteran Advocacy Project, New York Legal Assistance Group, City Bar Justice Center, and National Veterans Legal Services Program, respectively).

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 and law school clinical programs focused on assisting New York's military and veteran population.

⁸ Starting in Spring 2025, University of Buffalo School of Law will also have an in-house veterans practicum.

Comprehensive, culturally sensitive, veteran focused civil legal services can be life changing for New York's veteran population. The programs can ensure access to benefits, homelessness prevention, economic security, and family cohesion for New Yorkers who sacrificed on behalf of our country at the time they are most at-need.

Respectfully,



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Working Group Member Signatories:

City Bar Justice Center, Veterans Assistance Project
Cornell Law School, Veterans Law Practicum
Family Legal Care
Fordham Law School Feerick Center for Social Justice
Legal Aid Society of Northeastern New York
Legal Services of the Hudson Valley
Legal Services NYC
Maurice A. Deane School of Law at Hofstra University, Robert W. Entenmann Veterans Law Clinic
Nassau Suffolk Law Services, now known as, Legal Services of Long Island
New York Legal Assistance Group (NYLAG)
Veterans Advocacy Project
Volunteers of Legal Service (VOLS)