Creating a Sustainable Volunteer or Student Discharge Upgrade Program: Innovations, Frustrations, and Achievements

• Stephen Lessard, President, New York County Lawyers Association, Orrick, Herrington & Sutcliffe
• Dana Montalto, Veterans Legal Clinic, Legal Services Center of Harvard Law School
• Jennifer Fulmer, Managing Pro Bono Attorney, Legal Services of Northern Virginia
• Justine Pelham, Veterans Law Pro Bono Project, Legal Services of Northern Virginia
• Patty Fain, Pro Bono Coordinator, Montana Supreme Court Pro Bono Program

Veterans Discharge Upgrade Pro Bono Program

Stephen Lessard
NYCLA, President-Elect
Orrick, Herrington & Sutcliffe LLP
March 21, 2019

The Need

Thousands of veterans live with less than fully honorable discharges that can be administratively upgraded:

- 210,000 veterans live NYC; 15.2% of veterans have less than fully honorable discharges
- There are 98,386 veterans in Montana (Jan 6, 2017)
- PTSD underdiagnosed and stigmatized
- New guidance on cases involving mental health issues, traumatic brain injury, or sexual assault
  - Requires "liberal consideration"
  - Recognizes these issues were "far less understood than today"
- Since 2013, grant rate for ABCMR in PTSD cases has risen from 3.7% to 45%
The Work

- Written applications and in-person hearings
- Grounds for relief: equity and propriety
- In-person hearings require travel to Washington DC
- Legal representation greatly increases an applicant’s odds of success
- Grant rates are inconsistent, and generally low
- Vast majority of applicants are pro se
- “Small investments in pro bono legal services can help unlock a lifetime of access to the V.A. and help the neediest veterans with bad paper move on with their lives.” — Phillip Carter, The Vets We Reject and Ignore, N.Y. Times (Nov. 10, 2013).

Pilot Program

- 5 Upgrades; 3 Appeals (62.5% success rate)
- 272 hours per client
- $1,180 per client
- 27 Clients
- 6,041 attorney hours
- $31,847 in expenses

June 2013 – June 2018

Our Resources

- Urban Justice Center – Veterans Advocacy Project (UJC – VAP)
- Training and substantive guidance
- Forensic Psychologists
- Relationships with local clinical programs
- Congressional Representatives
- Letters of support
- Veterans Defense Program (N.Y. State Defender’s Association)
- Cultural competency training
- Volunteer Lawyers for Veterans (Fordham Law – Feerick Center)
- Student intern program, in development
Slide 7

Current Program

Intake & Screening

Potential Clients

NYCLA Program Coordinator

NYCLA Member Firms

Program Expansion

• Focus on recruiting NYCLA member firms
• Solo practitioners on a case-by-case basis only
• UJC to provide training for new firms; online resources

Program Structure

• Program Coordinator oversees administration, reviews and reports
• PC overseen by Chair of the Pro Bono Committee and the Director of Pro Bono Programs
• Firm liaisons interface with PC

Resource Expansion

• Leverage NYCLA marketing and imprimatur
• Recruit additional psychiatry programs for pro bono evaluations
• Partner with additional veterans service organizations

Slide 8

Stephen C. Lessard
President-elect
New York County Lawyers Association
slessard@orrick.com

Slide 9

Veterans Justice Pro Bono Partnership
Slide 10

WHY A PRO BONO PANEL?

More veterans seeking discharge upgrades than clinic (or other legal organizations) can represent

Previous efforts to increase pro bono resources through training alone insufficient

Lack of DU experience/expertise in private bar

Slide 11

STRUCTURE OF PRO BONO PANEL

- intake assessment: on the merits, review records
- All discharge statuses (Honorable to Dishonorable)
- New England veterans (but mostly Massachusetts)
- pro bono trainings: annual, at Boston Bar Association, videotaped available online
- Many major law firms, but also some in-house counsel and outside of Boston
- referral: match pro bono attorneys to veterans
- ongoing case support: stay in touch with pro bono attorneys through the case, provide guidance and consultation, offer resources and templates

Slide 12

WHAT MAKES A GOOD REFERRAL

Appropriate case for a pro bono referral
- Case theory
- Resources needed
- Difficulty

Referral packet with resources
Dedicated pro bono team with firm support
Veteran who is ready to engage with the pro bono team
Slide 13

**CHALLENGES—AND WHAT TO DO ABOUT THEM**

- Lack of expertise in discharge upgrade law
  - Case advisor
  - Trainings, resources, templates, examples
- Fewer firms with more cases
  - At-risk, low-income, in-need veteran clients
  - More trainings, increased engagement, and hiring in these income groups
  - Be explicit about how ways to stay in touch with clients.
- Firm innovation for experts
  - Highlight up-front whether case might need an expert
  - Counsel pro bono teams about finding pro bono experts or working with treating doctors.

Slide 14

**SUCCESSES (AND "TEMPORARY SETBACKS")**

- 100+ pro bono attorneys trained and working on cases
- ~12 law firms overall (both large and small), but vast majority placed with 6 large law firms (and 1 in-house counsel office)
- ~60 cases referred
- 3 case decisions: 2 favorable, 1 unfavorable (but being appealed)

Slide 15

**CONTACT**

Veterans from New England seeking a discharge upgrade:
- Call our intake line at (617) 390-2525

Attorneys interested in discharge upgrade pro bono advocacy:
- Contact Dana Montalto at (617) 390-2737 or dmontalto@law.harvard.edu

Upcoming Training on Thursdays, April 25 at Boston Bar Association

Slide 1

Creating a Sustainable Volunteer or Student Discharge Upgrade Program: Innovations, Frustrations, and Achievements
Jennifer Fulmer, Pro Bono Managing Attorney
Justine Pelham, Veterans Law Project Attorney
March 2019

Slide 2

• 2015 grant from Equal Justice Works and AmeriCorps launched the Veterans Law Project (VLP)
• About 800,000 veterans in VA
• 1/4 in NOVA with Fairfax and Prince William Counties having a higher percentage of veteran residents than the national averages
• Objective: Traditional Poverty Law and Veteran Specific Issue
  • At capacity on traditional poverty law
  • 2017 LSC/PBIF to meet gap through pro bono
  • All of VA

Slide 3

Veterans Law Project
LSNV’s Veterans Law Project provides legal assistance to low-income veterans in need of discharge upgrades and access to VA healthcare.

While LSNV’s known in the community for its commitment to traditional poverty law issues, serving veterans on veteran-specific issues requires a focused and coordinated outreach campaign with the intent to empower and educate the community as well as legal aid attorneys.
**Slide 4**

**Project Partners**

- Antonin Scalia Law School’s Mason Veterans and Servicemembers Legal Clinic (M-VETS)
- Hewlett Packard Enterprise (HPE)
- Hilton Worldwide
- Miles & Stockbridge
- Hogan Lovells
- Transurban USA

**Slide 5**

**Discharge Upgrade Pro Bono Project Structure**

1. **Initial Client Interview**
   - In-depth client interview to assess legal and medical needs.
   - Assessment of potential civil legal issues, discharge upgrades, and VA character of discharge cases.

2. **Medical Records Review**
   - Medical records (STRs, mental health records, post-service medical records) are reviewed.
   - HPE organizes records by highlighting, bookmarking, tabbing, and creating a table of contents.

3. **Placement of cases to pro bono attorneys**
   - Case summaries are drafted and sent to pro bono volunteers.
   - Project Attorney provides ongoing assistance to partnering pro bono representatives.

**Slide 6**

**Frustrations & Achievements**

- Becoming a stakeholder in local veteran communities
- Outreach efforts
- Medical Legal Partnerships with Vet Centers
- Community and legal trainings of specialized areas of law
- How to narrow legal issues/scope of pro bono cases
Veterans in Virginia seeking a discharge upgrade can contact LSNV’s intake line at (703) 778-6800, e-mail us at veteranslaw@lsnv.org, or apply through our website at http://www.lsnv.org/

Jennifer Fulmer
Managing Pro Bono Attorney
(p) 703-504-9153
jfulmer@lsnv.org

Justine M. Pelham
Project Attorney
(p) 703-778-4806
jpelham@lsnv.org
Montana Military Discharge Upgrade Project

A joint project of
Alexander Blewett III School of Law Veterans Advocacy Clinic
State Bar of Montana Veterans Law Section
Montana Supreme Court Statewide Pro Bono Program

Military Discharge Upgrade Project
Referral Process

Financial Screening
Basic Intake Form & Eligibility Screen
ABIII VAC Volunteer/Student phone interview/Intake
Student/Volunteer Prepares Memo and collects records
Statewide Pro Bono Coordinator places case

How Do Our Partners Fit Into the Process?

Alexander Blewett III School of Law Veterans Law Clinic
- Interviews eligible veterans
- Evaluates veteran intake for basic merit
- Veteran eligibility notification
- Screening Memo
- Student assistance to volunteer attorneys

State Bar of Montana Veterans Law Section
- Assists with volunteer recruitment and placement
- Assists in development of accuracy of continuing education, materials and resources
- assists in soliciting projects and clinical-veterans' needs
- Montana Supreme Court Statewide Pro Bono Program
- Evaluate basic intake for program eligibility
- Volunteer recruitment, retention, recording, and recognition
- Veteran upgrade case placement
- Assists in development and delivery of continuing education, materials and resources
- Communications among partners

Financial screening and malpractice coverage is provided by Montana Legal Services Association, a Legal Services Corporation grantee.
**Slide 4**

**Strengths and Challenges**

**Strengths**
- Excellent leadership from ABIII Law School, Prof. Wandler
- Network of partners each doing a little without a lot
- Committed volunteers
- Excellent training opportunities
- A personal approach to program involvement and connection with veterans

**Challenges**
- No specific funding or allocated staff
- No single portal for referral

---

**Slide 5**

**A Commitment to those who have served**

Prof. Hillary Wandler & The Alexander Blewett III School of Law
Col. Beverly Schneider
Robert Kampfer
Montana Justice Foundation
Crowley Fleck Law Firm
Volunteer Attorneys everywhere

---

**Slide 6**

**Montana’s Unique Pro Bono Attorney Population**

- 3,716 Active In-State Montana Attorneys
  - 22% solo practitioners
  - 41% government/pro-bono interest
  - 6% 1-5 attorney firms
  - 9% 6-10 attorney firms
  - 18% larger than ten attorneys

---
Contact Information

Alexander Blewett III School of Law
Veterans Advocacy Clinic
Professor Hillary Wandler, Clinic Director
406/243-6788
VeteransAdvClinic@mso.umt.edu

State Bar of Montana Veterans Law Section
Bruce Fain
Crowley Fleck PLLP
406/252-3441
bfain@crowleyfleck.com

Montana Supreme Court Statewide Pro Bono Program
Patty Fain
Statewide Pro Bono Coordinator
406/794-7824
pfain@mt.gov