

Assisting Veterans and Active Military Personnel with Benefit Claims and Other Legal Matters

By Marlene W. Coir and Laura Mancini

At the federal level, veterans law is governed by Title 38 of the United States Code¹ and Title 38 of the Code of Federal Regulations.² Matters involving veterans under the USC and CFR are administered by the U.S. Department of Veterans Affairs (VA). The agency's online site provides a wealth of information on benefits and services available to those individuals who have served in the United States armed forces and their dependents.³ The Michigan Department of Military & Veterans Affairs⁴ and the Michigan Veterans Affairs Agency⁵ websites are also good locations to review services and benefits available to veterans. All of these government websites are user friendly and provide application assistance to those seeking benefits.

Veterans may apply for benefits at the various Veterans Administration regional benefit offices. Requesting benefits at a regional office is the first step a claimant takes to secure aid or services. The office may grant, deny, or modify the request. If unsatisfied with the decision, the claimant may petition with an administrative appeal or notice of disagreement. The office's determination may also be considered by a decision review officer, who may alter or reverse the decision. If a decision review is not elected or if the officer's ruling is not satisfactory, the appellant must file a Form 9 appeal with the regional office in a timely manner. Deadlines differ depending on the action the office takes and must be carefully reviewed and followed by the appellant or his or her advocate.⁶

Once received, the Form 9 appeal is forwarded to the Board of Veterans' Appeals. After the board issues a decision on the matter, it may be appealed to the Court of Appeals for Veterans Claims, the only court that reviews the board's decisions. The court is an impartial Article 1 court; once a matter moves there, it is governed by rules and

procedures particular to that court, and the rules must be scrupulously followed.⁷ Appeals from the Court of Appeals for Veterans Claims are brought before the United States Court of Appeals for the Federal Circuit, and appeals from the federal circuit are brought before the United States Supreme Court. This appeals process is covered in detail in the *Veterans Appeal Guidebook*, a concise manual published by the American Bar Association for those representing veterans.⁸

A searchable database of administrative decisions of the Board of Veterans' Appeals is available at <http://www.index.va.gov/search/va/bva.jsp>. Information on the appeals process can be found at <http://www.bva.va.gov/>.

Attorneys wishing to become advocates for veterans should become familiar with the *Veterans Benefits Manual*, which is issued by the National Veterans Legal Services Program and updated every one or two years.⁹ Of particular relevance to advocates are Part V: The VA Claims Adjudication Process, Part VI: Advocacy on Behalf of VA Claimants, and Part VII: Correction of Military Records. The manual is available in print or as an e-book.

Many volunteer agencies assist veterans in applying for benefits and appealing regional office decisions that modify or deny benefits. Attorneys wishing to provide pro bono assistance to veterans may benefit from training available through private and government-sponsored programs including the Veterans Consortium Pro Bono Program,¹⁰

the National Veterans Legal Services Program,¹¹ and the University of Detroit Mercy School of Law Project SALUTE.¹²

Attorneys who want to formally represent veterans in the preparation, presentation, and prosecution of claims for VA benefits must be accredited by the U.S. Department of Veterans Affairs. The department will not accept nonaccredited attorneys as the attorney of record in claims for VA benefits. To become accredited, attorneys may apply using the appropriate form(s) from the VA website at <http://www.va.gov/ogc/accreditation.asp>. Information on payment for services is also available on this site. The qualification process for attorney accreditation is also discussed in Part 2 of the *Veterans Appeals Guidebook*.

The National Association of Veterans' Advocates, Inc.¹³ is a nonprofit organization that provides training to VA-accredited practitioners. According to its website, the association's services include training workshops for new practitioners; a forum for networking via its online bulletin board; presentation of expert testimony before Congress; and authoring of amicus briefs to the U.S. Court of Appeals for Veterans Claims, the Court of Appeals for the Federal Circuit, and the United States Supreme Court.¹⁴ The American Bar Association also provides volunteer attorneys with continuing legal education that meets VA accreditation requirements.¹⁵

At the state level, veterans advocates should become familiar with the veterans treatment courts. Standards for these courts

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are available on the Michigan courts administration pages.¹⁶ Veterans courts continue to be implemented within Michigan's various county court systems.

Attorneys are also asked to represent veterans and active-duty military personnel in nonbenefit matters. There are several legal publications and websites to assist attorneys with these endeavors. Both the ABA and the State Bar of Michigan have groups that concentrate in military and veterans law. The website for the ABA Standing Committee on Legal Assistance for Military Personnel¹⁷ contains information on the committee's mission and continuing legal education for attorneys. Of particular interest is the information on the ABA's Military Pro Bono Project, which details how individual attorneys and law firms can become involved. The site also has detailed information on the Servicemembers Civil Relief Act, a federal statute critical for attorneys to review when representing active-duty military clients. The SBM also has its own Military and Veterans' Law Section.¹⁸ This relatively new section provides assistance to Michigan attorneys working on military and veterans law issues. The website includes the section's mission, purpose, meeting minutes, and information regarding pertinent continuing legal education activities.

Attention has also been paid to the needs of the bench in hearing cases involving legal issues of active-duty military personnel. Two recently published titles that provide excellent guidance in this area are *A Judge's Benchbook for the Servicemembers Civil Relief Act*,¹⁹ sponsored by Legal Assistance for Military Personnel and published by the ABA; and Western Michigan University Cooley Law School's Michigan-specific text, *Michigan Judge's Guide to the Servicemembers Civil Relief Act (SCRA)*.²⁰

Family law is one of the most common areas of civil law in which attorneys provide pro bono assistance to veterans and active-duty personnel. Here again, the ABA offers helpful tools. The ABA's Section on Family Law has established a Military Committee, which specifically looks at the unique factors that arise in active-duty military divorce and family law cases.²¹ It contains resources such as white papers, continuing legal education materials, client handouts, links to articles on specific areas of family law, and lawyer-to-lawyer handouts.

Attorney Mark Sullivan, a retired Army Reserve JAG colonel and a former chairman of the committee, has published a comprehensive guide to handling military divorce cases—*The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families*.²² In 2014, he also published an article in *Family Court Review* titled "Military Custody and Visitation: Problems and Solutions in the Twenty-First Century."²³ He provides an in-depth treatment of the Uniform Deployed Parents Custody and Visitation Act and briefly touches on the Michigan case *Ekdahl v Ekdahl*,²⁴ in which the appellate court found that a parent's military deployment could not be held against the parent when determining the best interests of the child in a custody case.²⁵

Veterans law is a complex area that presents tremendous opportunities for pro bono assistance for attorneys and their firms. When working on such cases, attorneys need to be well-versed in the complexities these cases can pose. This article examines benefits and family law—the two areas in which attorneys are asked to assist most often—but these are by no means the only areas in which veterans and active-duty military personnel need legal assistance. ■



Marlene Coir has been a member of the State Bar of Michigan since 1990 and presently sits on the SBM Committee on Libraries, Legal Research, and Legal Publications. She is an active member of the Association of American Law Libraries and chairs the Michigan chapter of the Pro Bono Librarians Committee. Marlene is an attorney with the Child Advocacy Program and also provides reference service at the Wayne State University Arthur Neef Law Library.



Laura Mancini is director of library services for the Adams-Pratt Oakland County Law Library. She is also an adjunct faculty member for the School of Library and Information Science at Wayne State University. Laura is a member of the Solutions on Self-Help Legal Task Force and the State Bar Committee on Libraries, Legal Research, and Legal Publications.

ENDNOTES

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- Id.*