



RESOURCES FOR LAWYERS ASSISTING VETERANS

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RESOURCES FOR
LAWYERS
ASSISTING VETERANS



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Produced as a public service by the
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Please note that this brochure is solely intended to provide general information only and is not to be interpreted as legal advice. It is not intended to be an exhaustive treatise on these areas of law; rather, you, as a lawyer, will likely need to investigate these legal issues further. Any laws described in this pamphlet are subject to change at any time.

INTRODUCTION

“The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the Veterans of earlier wars were treated and appreciated by their nation.”

These words ring just as true today as they did in 1781 when George Washington proclaimed them. As lawyers, we are in a unique position to assist our nation’s veterans who have served our country in the past, as well as those who are now returning home from war, who face a number of legal challenges arising from their service to our country.

This pamphlet, a publication of the Texas Young Lawyers Association (TYLA) and Texas Lawyers for Texas Veterans, is intended to summarize legal issues faced by our veterans and resources for lawyers assisting veterans. In this pamphlet, you will find information about the following:

- Common Legal Issues Facing Veterans
- Assisting Veterans with Benefits Claims, Denials, and Appeals
- Mental Health Issues Faced by Veterans
- Resources for Lawyers Assisting Veterans

Texas Lawyers for Texas Veterans is a State Bar of Texas program developed to assist *pro bono* legal clinics throughout the state for military veterans. You can find links to a number of resources on the State Bar of Texas’ website: ***www.texasbar.com/veterans***.

TYLA and Texas Lawyers for Texas Veterans have also published a companion to this pamphlet, *Texas Lawyers for Texas Veterans: Resources for Veterans Seeking Help* (***www.texasbar.com/tylaweteransresourcespamphlet***), which is intended for use by veterans. It explains the need for representation by an attorney, and identifies and describes useful legal resources. The companion pamphlet also contains information regarding non-legal issues helpful to veterans, including education, employment, financial assistance, and health care.

COMMON LEGAL ISSUES FACING VETERANS

This section provides summary information regarding some of the legal issues most commonly faced by veterans. You will find that in addition to disability and retirement benefits issues, veterans face many of the same issues as any other client. Common legal areas you may be called upon to address include:

- Bankruptcy
- Consumer Protection
- Family Law
- Probate Law
- Property Law

Although this pamphlet focuses on veterans, there are several state and federal statutes that protect servicemembers. In the event you are asked questions about our active duty military, you should be aware of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C.A. § 510 *et. seq.*).

To view the full text of the SCRA, visit:

www.uscg.mil/legal/la/Legal_Assistance_doc/getdoc.pdf

Additionally, consult TYLA's *Servicemember Civil Relief Act* pamphlet:

www.tyla.org/tasks/sites/default/assets/File/08ServicememberCivilReliefActBro.pdf

BANKRUPTCY

Bankruptcy is a process that allows individuals and families to discharge or reorganize the debts they owe to their creditors. There are five types, or chapters, of bankruptcy — Chapters 7, 9, 11, 12, and 13. Consumers typically file Chapter 7 or 13. It is important to speak to an attorney familiar with bankruptcy law before filing, or assisting someone in filing, a bankruptcy petition.

In both Chapters 7 and 13, a debtor is entitled to receive a discharge of all debts except those debts incurred by fraud, embezzlement, larceny, domestic support obligation, willful or malicious injury to the property of another entity, death or personal injury caused by the debtor's operation of a motor vehicle while intoxicated, or the debtor's failure to pay restitution under certain criminal restitution orders. An educational loan may not be discharged unless the debt imposes an undue hardship.

Chapter 7 Bankruptcy

Chapter 7 creates an estate to preserve and liquidate the non-exempt assets of the debtor in an orderly way. The debtor must receive credit counseling prior to filing a bankruptcy petition. A trustee is appointed by the U.S. Trustee's office after Chapter 7 papers are filed with the court. The trustee investigates the financial affairs of the debtor and takes control of the non-exempt property within the debtor's estate after the case is filed. The trustee's role in the case is to collect and liquidate property of the estate and distribute any cash to creditors. After the trustee investigates the circumstance that led to the debtor's insolvency, the debtor is forgiven of his or her debts. The debtor's creditors are paid from the non-exempt assets of the bankruptcy estate.

Under certain income rules, a debtor may not file a petition under Chapter 7 if his or her relative income exceeds the state median income for an individual taxpayer or that of a family of two, three, or four family members within the State of Texas. If these rules apply to the debtor, a presumption of abuse occurs, which must be rebutted by the debtor. If the debtor fails to rebut the presumption, the debtor will be required to file a case under Chapter 13.

Chapter 7 cases typically last 60 to 90 days unless the trustee uncovers fraud or a creditor files an objection to discharge in the case. If a debtor transfers property within two years of the date of filing his or her case, the trustee may void such transfer. If the debtor made the transfer with the actual intent to hinder, delay, or defraud creditors, a creditor or trustee may ask the court to revoke the debtor's Chapter 7 discharge.

Chapter 13 Bankruptcy

Chapter 13 creates an estate to allow wage earners to discharge their pre-petition debts. The debtor may propose a plan to repay his or her debts over a period of three to five years. However, the debtor must commit all of his or her projected disposable income under the plan, and the plan repayment period may not exceed five years. The debtor must also receive credit counseling prior to filing a Chapter 13 bankruptcy petition. To qualify for Chapter 13, an individual debtor's unsecured debts may not exceed \$336,900 and his or her secured debts must be less than \$1,010,650.

In Chapter 13, the trustee mainly collects payments made under a plan approved by the court, and then uses that money to pay off part of the debts. There is an "automatic stay" which prevents creditors from collecting on debts owed at the time the bankruptcy case was filed. However, creditors in both chapters can file

proofs of claim to try to receive payment for some of the money they are owed by the trustee, and they can take other actions with court permission to protect their interests and attempt to receive payment. The debtor's income affects the amount each creditor is entitled to receive by extending the length of a proposed plan of reorganization. Under certain rules, if the debtor's income falls below the median state income tax guidelines, the plan may not exceed three years. Similarly, if the debtor's income exceeds the median state income tax guidelines, the plan cannot be less than five years.

Unlike Chapter 7, the debtor is allowed to bring pre-bankruptcy mortgage payments current over a period of time. However, the debtor must pay each of his or her post-bankruptcy mortgage payments as it comes due. The nature of the debtor's exempt property varies by jurisdiction and by state but typically includes a portion of the equity in the debtor's primary residence as well as other personal items. The debtor will retain possession of his or her property so long as all projected disposable income is paid to creditors for the duration of the plan.

Exempt Property

All property considered "exempt" can be maintained under Chapter 7 or 13 bankruptcies. There are two different sets of property considered "exempt" — federal and state. The Texas exemptions allow a family to keep a homestead, no matter the value, and up to \$60,000 (\$30,000 per individual) of certain personal property. Texas Property Code Chapters 41 through 44 contain details regarding property exempt from claims, with Sections 42.001 and 42.002 containing the specific list of exempt personal property. Property that is not normally exempt is land other than the homestead, extra cars, boats, four wheelers, cash, or money in a checking or savings account.

For more information on consumer bankruptcies, consult the following reference:

State Bar of Texas Bankruptcy Section

www.txbankruptcylawsection.com

TYLA's *Consumer Bankruptcy*

www.tyla.org/tasks/sites/default/assets/File/37475BankruptcyBookletLoRes.pdf

CONSUMER PROTECTION

You may find that a veteran, as with any client, has been taken advantage of by another person through fraud or dishonest practices. As such, it is helpful to be aware

of the Deceptive Trade Practices Act (DTPA), the Residential Construction Liability Act (RCLA), and the Texas Debt Collection Act.

DTPA

The DTPA is found at § 17.41 *et seq.* of the Texas Business and Commerce Code. It provides what is referred to as the “laundry list” of actionable wrongful acts, such as misrepresenting the quality of goods or services, misrepresenting rights in an agreement, and about two dozen others. The DTPA requires that the opposing party receive notice of the claim and time to extend an offer of resolution. The DTPA is one of the most often amended statutes, so it is a good idea to review the statute, even if you have dealt with a DTPA case in the past.

RCLA

The RCLA is found at § 27.001 *et seq.* of the Texas Property Code. The RCLA specifically applies to disputes regarding construction or remodeling of a home. The RCLA also requires that the opposing party receive notice of the claim and an opportunity to make an offer of resolution. The RCLA is amended with some regularity and you should therefore review the statute each time you are presented with a case involving the RCLA.

Texas Debt Collection Act

In Texas, attempts to collect debts are regulated by the Texas Debt Collection Act. The Act prohibits the use of harassing, abusive and fraudulent acts by individuals or companies who are attempting to collect outstanding payments from debtors. Violators of the Act could be subject to criminal and/or civil penalties. Consumers may also be entitled to injunctive relief and damages. Actions deemed to be violations of the Act may also be actionable under the DTPA. Unlike the federal Fair Debt Collection Act, which applies only to professional debt collectors or attorneys attempting to settle a debt, the Texas Debt Collection Act applies to anyone collecting a debt.

Texas Finance Code § 392.301 *et seq.* outlines the types of prohibited debt collection methods that involve threat or coercion; harassment or abuse; unfair or unconscionable means; fraudulent, deceptive, or misleading representations; deceptive use of a credit bureau name; or the use of an independent debt collector. Section 392.202 describes the process by which an individual can dispute the accuracy of an item that is in the files of a third-party debt collector or a credit bureau file.

FAMILY LAW

The paramount family law issues that most individuals face, including veterans, relate to the dissolution of a marriage through a divorce action. It would be impossible to provide a meaningful discussion on all the possible issues that a veteran, or any individual, may face in this regard. Fortunately, the Texas Family Code addresses the vast majority of the law in this arena. Additionally, an attorney representing a veteran should review the latest edition of Sampson & Tindall's annotated *Family Code*.

In a divorce, the court divides the community property of the couple in a just and right equitable division. Understanding the issues surrounding a veteran's disability and retirement pay will be important. Additionally, while Texas does not have court-ordered alimony, "spousal maintenance" is available in certain limited circumstances. Section 8.055 of the Texas Family Code specifically excludes the U.S. Department of Veterans Affairs (VA) service-connected disability compensation, social security benefits, disability benefits, and workers' compensation benefits from spousal maintenance calculations.

When deciding custody of children, the court will always rule based on the best interest of the child. However, the status quo is a very powerful and useful tool in family law matters. The court generally works to uphold the status quo. In the majority of cases, the court will follow the formula laid out in the statutory guidelines when calculating child support.

For more information on family law issues, consult the following references:

State Bar of Texas Family Law Section

www.sbotfam.org

TYLA's *Pro Se Divorce Handbook*

[www.tyla.org/tasks/sites/default/assets/File/37603-ProSeDivorceBookENG_2010_FINAL\(1\).pdf](http://www.tyla.org/tasks/sites/default/assets/File/37603-ProSeDivorceBookENG_2010_FINAL(1).pdf)

TYLA's *What to Expect in Texas Family Law Court*

www.tyla.org/tasks/sites/default/assets/File/2005FamilyLawBrochure.pdf

PROBATE LAW

In matters involving probate law, no veteran-specific statutes apply. The Texas Probate Code addresses the vast majority of the law in this arena and an attorney representing a veteran should review the latest edition of the annotated Probate Code as a reference point. Two other valuable resources are the State Bar of Texas Real Estate,

Probate and Trust Law section's website (www.reptl.org) and the continuing legal education course materials for the Building Blocks of Wills, Estates and Probate that the State Bar of Texas offers each year in conjunction with the Advanced Estate Planning and Probate Course.

The issues commonly faced by individuals in this area of law include probating the will of an individual or administering the estate of a person who died intestate (*i.e.*, without a will). The proceeding will take place in the county in which the decedent resided in at the time of death. Depending on the statute governing probate jurisdiction in that county, the matter might be heard by the county court, county court at law, or the statutory probate court.

Guardianships are also governed by the Texas Probate Code. A guardianship requires that an individual be determined incapacitated. An incapacitated adult is an individual who, because of physical or mental condition, is substantially unable to (1) provide food, clothing, or shelter for him or herself; (2) care for him or herself; or (3) manage his or her own financial affairs. There are two types of guardianships: (1) guardian of the person; and (2) guardian of the estate. It is common to have one type of guardianship without the other. For example, if a family member has a valid power of attorney, there may not be a need to have a guardian of the estate. Both types of guardianships have annual reporting requirements.

For more information on probate law issues, consult the following references:

TYLA's *To Will or Not to Will*

www.tyla.org/tasks/sites/default/assets/File/ToWillOrNotToWill.pdf

TYLA's *Protecting the Incapacitated: A Guide to Guardianship in Texas from Application to Oath*

www.tyla.org/tasks/sites/default/assets/File/35786-TYLA_GuardianPamphlet_FINAL.pdf

PROPERTY LAW

Veterans will likely need your assistance either in negotiating a home purchase or keeping their homes. There are several areas in property law that you will want to review.

Foreclosure

Home ownership comes with certain obligations, such as property taxes and mortgage payments. Failure to meet these obligations can result in a wide variety of actions, including foreclosure. Chapter 51 of the Texas Property Code establishes the

minimum requirements for foreclosure in Texas, which can include both non-judicial and judicial foreclosure, and a hybrid type of foreclosure used in cases involving home equity loans. Once foreclosure is instituted, a lender must follow minimum requirements found within Chapter 51, but must also honor additional restrictions that may be included in the deed of trust. If a homeowner is facing a potential foreclosure action, several options are available such as loan modification or payment plans, voluntary transfer of ownership to the lender through a deed in lieu of foreclosure, or even bankruptcy.

Property Tax Exemptions

An inevitable fact of homeownership is the payment of property tax. In addition to the standard exemptions found in Chapter 11 of the Texas Property Code, such as the homestead exemption, Texas law provides specific exemptions for disabled veterans.

General Exemption for Disabled Veterans

Property Code § 11.22

Texas law provides certain exemptions (up to \$12,000) for all real property owned by disabled veterans based on the percentage of the property owner's service-connected disability. The exemption extends to surviving spouses of veterans, as well as the surviving spouses of military personnel who die on active duty.

Residence Homestead of 100 Percent or Totally Disabled Veterans

Property Code § 11.131

Effective for the 2009 tax year, disabled veterans who meet certain minimum disability thresholds are exempt from paying property taxes on their homesteads. To qualify, a property owner must be (1) classified by the U.S. Department of Veterans Affairs (VA) as being "unemployable" or must be 100 percent disabled; and (2) the property owner must receive 100 percent disability compensation from the VA. The exemption does not extend to surviving spouses of eligible veterans. However, surviving spouses are still eligible for property tax exemptions for people with disabilities, and for the 65-and-older homestead exemption.

Late Application for Homestead Exemption

Property Code §§ 11.431 and 11.439

In the event that the chief appraiser of a taxing district receives a late application for a homestead exemption, including a disabled residence homestead exemption, the application must be accepted for review if filed not more than one year after the original delinquency date for taxes on the homestead. If property taxes have been paid by an individual who is eligible for a homestead exemption, upon

proper application and approval, the tax collector must repay the collected amount within 60 days after the appraiser is notified of the granted exemption.

Landlord-Tenant Issues

Housing disputes between landlords and tenants make up a large portion of the docket in a Justice of the Peace Court. The matters most often litigated surround the process of eviction after a tenant has failed to pay rent, has broken a restriction of the lease, or has broken the law on the leased premises. Another highly contentious matter involves actions brought by the tenant against the landlord to protect his or her personal health, safety, and welfare. Matters brought by the tenant are often coupled with claims of landlord retaliation against the tenant. Chapters 91 and 92 of the Texas Property Code provide step-by-step details of the procedures that both landlord and tenant must take in order to realize certain remedies.

For more information on property law issues, consult the following references:

TYLA's *Facing Foreclosure*

www.tyla.org/tasks/sites/default/assets/File/37647ForeclosurePamphletLoRes.pdf

TYLA's *Tenant's Rights Handbook*

www.tyla.org/tasks/sites/default/assets/File/2009TenantsRightsPamphlet.pdf

ASSISTING VETERANS WITH BENEFITS CLAIMS, DENIALS AND APPEALS

Attorneys can play a key role in assisting veterans with benefits claims, denials, and appeals. Benefits from the U.S. Department of Veterans Affairs (VA) include disability benefits, certain education assistance benefits, burial benefits, widow benefits, certain types of pension benefits, certain types of life insurance benefits, and a long list of other miscellaneous benefits. However, most of the VA denial of benefit cases and the legal practice surrounding those denials focus on veterans' disability claims. Veterans who suffer from certain service-connected disabilities can, in some instances, be entitled to disability benefit payments.

Three basic elements are necessary for a veteran to be entitled to VA disability benefits. First, the veteran must suffer from a current recognizable disability. Second, the veteran must have suffered from an injury or disease that was "incurred" or "aggravated" during a period of active duty service. Third, there must be a "nexus" connecting the current disability to the event that took place while the veteran was serving in an active duty capacity.

All VA claims start when a veteran files a claim at his or her local VA Regional Office (VARO), where the claim is initially processed by an individual employee of the VA. If the veteran is not successful at this point, the claim can be reviewed by another employee of the VARO called a Decision Review Officer (DRO). In general, if the claim is denied at the VARO level, the veteran has the right to appeal his or her claim to the Board of Veterans Appeals (BVA), and ultimately if not successful there, the Court of Appeals for Veterans Claims (CAVC) in Washington, D.C.

VA claims can make their way up and down the different levels of the VA hierarchy a multitude of times. It is not uncommon for a VA claim to make its way up to the BVA and be remanded back to the VARO two or three times. It is also possible for a previously denied claim to be applied for and re-opened by the VA many times. There are few limitations to this right, and it happens on a regular basis many years after a previous VA denial.

Attorneys can assist veterans on a pro bono basis at all phases in the claims process. Contrary to popular belief, attorneys can become involved in the VA claim process at the initial level of the VA hierarchy, as well take an active role in the adjudication process well in advance of traditional appellate litigation. In 2007, Congress began allowing accredited attorneys to charge a fee for representing veterans in the VA benefits adjudication process as long as the veteran claimant has applied for benefits and been denied.

VA Accreditation of Attorneys

In order for an attorney to represent veterans before the VA, an attorney must be accredited by the VA. To obtain accreditation, an attorney must formally apply with the Office of the General Counsel of the VA, and after receiving proper credentials, must regularly complete continuing legal education to maintain the VA accreditation. Further information on attorney accreditation can be found on the Texas Lawyers for Texas Veterans web page at www.texasbar.com/veterans.

Assisting a Veteran with Filing an Initial Claim

The U.S. Department of Veterans Affairs website (www.va.gov) contains the necessary forms that are needed to file an initial claim, as well as detailed instructions regarding their completion. Keep in mind that you do not need a complete case file when you submit the initial claim; rather, submit what you have so the date of inception is triggered. You can always supplement the record after the date of inception.

Do not panic if the initial claim is denied. Denials are often based on perceived deficiencies in documentation or proof. A veteran's claim file can be freely corrected or supplemented before reconsideration.

Anatomy of a Veteran Benefits Claim

I. *Requesting the C-file.* If you agree to investigate a claim filed by a veteran, the first step you will have to complete is requesting the veteran's claims file, called a C-file. You should request the C-file from the VARO.

- ❖ The veteran is entitled to one free copy, although usually the VA does not charge for an additional copy for counsel.
- ❖ To obtain the C-file, you can use the following forms: (1) VA Form 21-22a; (2) VA Form 10-5345 (medical); and (3) VA Form 3288 (everything). But a letter and limited Power of Attorney often works just as well as the forms.
- ❖ If the claim is in the BVA, the request should be sent to the BVA. The BVA then sends the C-file to the VARO for copying.
 - It may take 90 days or more to receive a C-file. Generally, you can arrange to go to the VARO to view the file prior to it being copied and sent to you. Resubmit the request every 30 days after you submit your request for the C-file. Consider submitting the request by fax and mail, and augmenting your request with a phone call.

II. *Reviewing the C-file.* Before doing anything else, make a copy or scan the C-file and make sure that copy remains intact and untouched.

- ❖ Identify relevant documents.
- ❖ Sort the File. Sort it by health care provider, date, facility, location, etc. The file will not be sorted when you receive it.
- ❖ List the issues you and the veteran have identified, such as: (1) denial that a particular condition exists or is disabling; (2) denial of service connection for a particular condition or conditions; (3) rating for a particular condition or conditions; or (4) entitlement to Individual Unemployability.
- ❖ Analyze the C-file. List all the evidence that each decision relies on, as well as any evidence of which you are aware, that is not mentioned. List the bases of the unfavorable decisions, so you can review the file while looking for evidence that contradicts the bases of those decisions.

- ❖ Annotate the C-file. Develop a method for annotating the C-file. Various methods are: (1) case maps; (2) Word documents to make comments; (3) bates stamp the C-file and use a form to record pages and evidence; (4) scan the file and annotate in Adobe copy with book-marks and comments; or (5) handwritten notes and coding systems.

III. What to Look for When Reviewing the C-File. These are a few things to consider when reviewing the C-file.

- ❖ Are documents missing? These missing documents could either be documents the veteran tells you he or she submitted, or documents referenced by the decision.
- ❖ Did the VA provide a medical examination to evaluate the claimed disability? If so, review the VA Compensation & Pension (C&P) medical examination report carefully. Did the examiner note whether he or she reviewed the C-file, including reports of other medical examinations, or whether the C-file was available for review?
- ❖ Did the VA examiner(s) investigate the veteran with respect to all claimed disabilities, and did the examiner address each disability? Was the examination adequate? Did the examination follow the VA protocol, as set forth in the VA Examination Worksheets?
- ❖ Did the VA properly interpret the C&P evaluation in its decision? Does the decision refer to, and consider, any parts of the report favorable to the veteran?
- ❖ Is there any evidence in the C-file that is favorable to the veteran that the VA did not consider in its decision?
- ❖ Did the VA obtain all records of which it was, or should have been, aware before issuing a decision? This might include records from private medical evaluators or treatment providers, employers, the Social Security Administration, Vocational Rehabilitation, etc.
- ❖ Is there a basis for denial, substantiated by the evidence, for every claim that has been denied? Did the VA communicate with the veteran about what evidence was needed to substantiate each claim?
- ❖ Does the VA decision correctly quote and cite to the evidence on which it relied (e.g., medical evaluation reports)?

- ❖ Did the VA properly apply presumptions (e.g., presumptive conditions or periods, presumption of soundness, presumption of aggravation)? Do the decisions consider all potential claims reasonably inferred from the claim filed?
- ❖ Are the Service Medical Records (SMRs) in the file? If not, what attempts were made to get them? This reflects the duty to assist and the VA is obligated to give notice to the veteran of any information that it is unable to obtain.
- ❖ If the file contains Orders of Remand from the BVA, did the VARO comply with the Orders?
- ❖ If the veteran applied for social security disability benefits, is a copy of the veteran's Social Security Administration file, including the independent examination report, in the C-file?
- ❖ Did the veteran receive notice of everything he or she should have gotten?
- ❖ Are there indications that the veteran did not appear for any medical or psychological examinations? If so, did the veteran receive notice of the examinations?
- ❖ Did the VA follow the case law applicable at the time of the decision?
- ❖ Are there any clear and unmistakable errors (CUEs) in the final VARO or BVA decision?

IV. Collecting Evidence to Support Claim.

- ❖ The VA's Duty to Assist. The VA has a duty to assist the veteran in supporting his or her claim. The VA must obtain the veteran's Service Medical Records and any other relevant medical records. If the veteran's current medical condition is at issue, including existence of a current disability, the VA must provide the veteran with a physical examination. The examination must result in a readable report that renders a medical conclusion. This must be done for each of the veteran's claimed disabilities. Counsel should not rely on the VA's duty to assist, but rather should take responsibility for gathering records and other evidence to support the veteran's claim.

❖ Initial Records Requests. In addition to the C-file, you should obtain the following documents:

- Copy of the veteran's military discharge (DD-214) to verify dates of service and conditions under which the veteran was discharged.
- Obtain and *copy* all records that the veteran has accumulated related to his military service and his claimed disability.
- If the veteran filed for social security disability, ask the veteran to obtain his or her file from the Social Security Administration. It is generally quicker for the veteran to ask for the file directly.
- Obtain signed HIPAA-compliant medical releases from the veteran for each private hospital, or doctor, or other medical or mental health facility at which he or she has received evaluation or treatment at any time for each claimed disability or condition, and request all medical and mental health records, including treatment notes.
- Obtain signed releases from the veteran for requesting all service records, including medical records, and request the records. A request for medical records needs to specifically identify the location and period of each hospitalization. Remember that outpatient and inpatient records are stored separately.
- Obtain signed releases from the veteran for employment records from each of the veteran's employers. This will allow you to evaluate whether the veteran's claimed disability caused him or her any problem in the work place.
- If the veteran filed a worker's compensation claim, request the veteran's file from the Texas Department of Insurance Division of Workers' Compensation.

V *The Compensation and Pension (C&P) Examination.* An important event that could determine the success of a veteran's claim is the C&P Examination. The veteran must subject him or herself to the C&P Examination conducted by a VA physician. Prior to the C&P Examination, read and review the VA Clinician's Manual diagnostic codes and examinations worksheets with the veteran. Review all the important issues that might arise at the examination, such as: (1) employment history and retirement; (2) substance abuse or self-medication; (3) lack of obtaining treatment or gaps in treatment; (4) symptom

continuity; (5) any specific concerns stemming from prior VA decisions or remand instructions; or (6) anything from prior medical examination reports that is unfavorable to the veteran.

VI. *Responding to a Ratings Decision Denying a Claim or Otherwise Unfavorable Decision.*

❖ **File a Notice of Disagreement.** If the veteran disagrees with the ratings decision, he or she must file a Notice of Disagreement (NOD) *within one year from the Ratings Decision*. The NOD can be a letter or other written statement. The NOD should list the particular findings and conclusions of the Ratings Decision with which the veteran disagrees. The letter should be as detailed as possible. The NOD must be received by the Regional Office. The Regional Office may inform the veteran by letter that he or she has 60 days to respond to a Ratings Decision. Regardless of the letter, the veteran has one year.

❖ **Options to Review the Ratings Decision.** The veteran has two options.

1) Review at the Regional Office by a Decision Review Office (DRO).

■ The DRO will review the claim *de novo*. The veteran has a right to request a hearing before a hearing officer when he or she files the NOD. The hearing is recorded and transcribed and becomes part of the C-file. The veteran can always submit additional evidence at the Regional Office and at the BVA level. You can also submit briefs or memoranda in support of the claim. Requesting a review by the DRO does not waive the right of appeal to the Board of Veteran Appeals.

2) Appeal to the BVA.

■ The veteran can appeal to the BVA directly after submitting the NOD without seeking DRO review or the veteran can appeal an unfavorable DRO decision to the BVA.

■ The veteran announces his or her intention to appeal the Ratings Decision with her NOD. In response, the Regional Office issues a Statement of the Case (SOC). The SOC looks like a Ratings Decision but it is called Statement of the Case.

■ The veteran must file a formal appeal 60 days from the date on the cover letter that accompanies the SOC. If addi-

tional information becomes available after issuance of the SOC, a Supplement SOC will be issued.

- Counsel must file a VA Form 9 to perfect an appeal to the BVA. The form has to be filed to finalize the transfer of the veteran's case from the Regional Office to the BVA. The veteran should indicate on the VA Form 9 whether he or she is requesting a hearing.

VII. *The BVA Hearing.* The veteran can request a hearing at which he or she can appear with or without counsel. Witnesses can testify and additional evidence can be presented at the hearing.

- ❖ If the veteran waives reconsideration of new evidence by the Regional Office, new evidence can be introduced at the BVA hearing.
- ❖ If the veteran does not waive reconsideration of new evidence by the Regional Office, the matter will be sent back to the Regional Office for another Supplemental SOC.
- ❖ The hearing can be conducted in one of three ways: (1) a hearing at the Washington, D.C. BVA; (2) a hearing at the Regional Office by a "travel board" of the BVA; or (3) a videoconference hearing at the Regional Office via video feed to the BVA.

VIII. *The BVA Decision.*

The BVA can:

- ❖ Grant the claim, either in whole or in part (essentially reversing the Regional Office's decision). The case is then sent to the Regional Office, where benefits are calculated and paid.
- ❖ Deny the claim (essentially affirming the Regional Office). The veteran has 120 days from the date of the BVA decision to appeal the decision to the CAVC.
- ❖ Remand the claim for further development (which is a frequent result).

A BVA decision can take two and a half years from the filing of the VA Form 9. The veteran should monitor the process in order to assure that the appeal has been certified and docketed and that it does not become lost.

IX. Claims Based on Clear and Unmistakable Error (CUE).

- ❖ A claim that a final Regional Office or BVA decision is based on CUE can be made at any time, no matter how long ago the decision was issued.
- ❖ The claimant must show that the Regional Office or the BVA committed an error that, if not for the error, the veteran would have received benefits.
- ❖ The claim for revision must be clearly identified as a CUE claim, and it must specifically identify the error that was made.
- ❖ If a denial of claim is reversed, the decision is post-dated to the date of the original denial. Such claims are generally difficult to prove and the VA is extremely reluctant to grant them.

Helpful Resources for VA Claimants and Legal Representatives

- ❖ Check with your local bar association to find a local accredited VA attorney.
- ❖ You will soon be able to find continuing legal education (CLE) courses regarding VA disability law at TexasBarCLE's website ***www.texasbarcle.com***.
- ❖ The American Bar Association Initiative on Veterans Affairs at ***www.abanet.org/vetaffairs*** is a great resource with many helpful publications, articles, and links for veteran claimants or their representatives.
- ❖ The National Veterans Legal Services Program at ***www.nvlsp.org*** has been assisting veterans and VA lawyers for decades. You can purchase legal treatises, VA regulations, and CLE materials at their website.

MENTAL HEALTH ISSUES FACED BY VETERANS

Although mental health issues have always been common among veterans, research shows it is becoming even more prevalent. As such, attorneys working with veterans need to be aware of the signs of mental illness, as well as organizations that can assist those who may be suffering from mental illnesses.

It is estimated that among troops who served in Iraq between 2005 and 2007, as many as 20 percent of soldiers and 15 percent of Marines screened positive for a

mental health problem. The Rand Corporation found that one-third of Iraq and Afghanistan veterans suffer from Post-Traumatic Stress Disorder (PTSD), traumatic brain injury (TBI), or major depression, perhaps due to long deployments and a high rate of exposure to combat. This statistic is particularly disturbing, given that PTSD's many adverse effects include substance abuse, interpersonal difficulties, and unemployment, all of which are also associated with veteran homelessness.

Veterans with mental illnesses tend to detach themselves from activities and people. Veterans returning from a war zone may overreact to common family issues with constant anger and frequent outbursts. They may also suffer from recurrent nightmares and sleeplessness, and may begin abusing drugs or alcohol.

If you witness any of these warning signs in a veteran client, there are many resources to assist your client in obtaining treatment. Swift action is necessary to protect your client from the risks associated with these illnesses, such as homelessness and suicide. It is not your responsibility to diagnose your client with mental illness; rather, you must be on alert for the possibility and ready to refer him or her to the appropriate help.

While this pamphlet focuses on assisting veterans with civil legal matters, you should be aware that, pursuant to statute, some Texas jurisdictions have established (or are in the process of establishing) courts specifically focused on issues unique to veterans accused of criminal violations. If you are assisting a veteran with civil issues and learn of criminal charges, you should make him or her aware of these courts, which may take into account that a service-related disease, condition, or disability may have influenced or caused behavior alleged to be in violation of Texas criminal law.

The companion pamphlet *Texas Lawyers for Texas Veterans: Resources for Veterans Seeking Help* (www.texasbar.com/tylaveteransresourcespamphlet) includes a list of resources available to veterans facing mental health issues, which you are encouraged to pass along to your client or to contact on his or her behalf. The most commonly referred to resources follow:

The U.S. Department of Veterans Affairs
www.mentalhealth.va.gov

The U.S. Department of Veterans Affairs (VA) offers a number of mental health services to veterans and has facilities around the country, not just in urban areas. Each VA medical center has mental health specialists. In addition, the VA's mental health website contains substantive articles that provide basic information about

common mental health conditions such as depression and PTSD, as well as information and resources designed to help specific groups of veterans such as women, those who have recently been discharged from active duty, and those who are looking for job training and housing assistance. If you suspect that your client is suffering from mental illness, this website provides a good resource to learn more about the symptoms.

National Resource Directory

www.nationalresourcedirectory.gov

The National Resource Directory is a website for wounded, ill, and injured servicemembers, veterans, and their families. It provides access to services and resources at the national, state, and local levels to support recovery, rehabilitation, and community reintegration. Visitors can find information on a variety of topics including benefits and compensation, education and training, employment, family and caregiver support, health, homeless assistance, housing, transportation and travel, and other services and resources.

Programs for Servicemembers Returning from Afghanistan and Iraq

www.oefoif.va.gov

This site contains a number of FAQs and links to resources specifically designed for veterans who served in Afghanistan (Operation Enduring Freedom) and Iraq (Operation Iraqi Freedom). Because of the increase in certain types of mental illnesses among veterans returning from service in Iraq and Afghanistan, this website's more targeted information is especially helpful for this group.

National Center for PTSD

www.ptsd.va.gov/public/index.asp

This website is intended to support veterans and other trauma survivors. The site offers comprehensive resources for those who want to learn more about traumatic stress and will help you identify whether your client is showing signs of suffering from PTSD.

GENERAL RESOURCES FOR LAWYERS ASSISTING VETERANS

Texas lawyers representing Texas veterans may face issues that fall outside the regular parameters of their practice. Consequently, lawyers will need to utilize materials

that specifically address certain legal issues facing veterans. Here is a compilation of resources that may assist you:

Texas Veterans Commission

texas-veterans.com

A comprehensive website that provides information regarding claims for veterans' benefits.

Military Law Section of the State Bar of Texas

www.militarylawsection.com

Provides links, resources, and contact information for Texas attorneys representing veterans.

The American Veterans and Service Members Survival Guide

www.lawyerservingwarriors.com/images/survivalguide.pdf

A detailed guide to representing servicemembers. Includes information ranging from benefit claims to family law issues. Also a tremendous resource for discussing a particular statute, rule, or military provision that affects veterans.

U.S. Department of Justice

www.servicemembers.gov

Provides links to federal laws affecting servicemembers and veterans.

Federal Benefits for Veterans, Dependents & Survivors

www1.va.gov/opa/publications/benefits_book.asp

Contains a summary of the federal benefits for which veterans may be eligible.

Texas C-BAR (Community Building with Attorney Resources)

www.texasbar.org/legal_library/veterans

Provides information on the rights of veterans in various situations.

TexVet: Partners Across Texas

www.texvet.com

A collaborative effort of federal, state and local organizations that focuses on providing veterans a wealth of resources.

State of Texas Property Tax Information

www.window.state.tx.us/taxinfo/proptax

Provides information on exemptions available to Texas property owners, including those specific to Texas veterans.

Navy Judge Advocate General

www.jag.navy.mil

Provides information and materials useful for representing Navy veterans.

Army Judge Advocate General

www.jagcnet.army.mil

Provides information and materials useful for representing Army veterans.

Air Force Judge Advocate General

www.afjag.af.mil

Provides information and materials useful for representing Air Force veterans.

Marine Corps Staff Judge Advocate

www.marines.mil/unit/judgeadvocate/Pages/Home/SJA_to_the_CMC.aspx

Provides information and materials useful for representing Marine Corps veterans.

National Security and Military Law in a Nutshell (Nutshell Series)

by Charles A. Shanor and L. Lynn Hogue

Servicemember's Legal Guide: Everything You and Your Family Need to Know About the Law

by Jonathan P. Tomes, Michael Callahan, Alice M. McCart, and Karl Mueller

State Bar of Texas — Texas Lawyers for Texas Veterans

www.texasbar.com/veterans

Provides resources for attorneys regarding volunteering, local bar association clinics, VA attorney accreditation, training sessions, and continuing legal education.

*The Texas Young Lawyers Association
and Texas Lawyers for Texas Veterans
are proud to provide this publication as a service
to Texas veterans, who have sacrificed much
for our state and our country.
We hope you find it to be a valuable resource.*

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