Representing Military Veterans in Oregon

Cosponsored by the Military and Veterans Law Section

Thursday, May 19, 2016
8:15 a.m.–4 p.m.

5 General CLE credits,
1 General CLE or Access to Justice credit, and .5 Ethics credit
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    — Daniel Crowe, *Veterans’ Justice Project, Metropolitan Public Defender Services, Inc., Portland, Oregon, and Executive Director, Oregon Veterans Legal Services, Mt. Angel, Oregon*
SCHEDULE

7:30  Registration

8:15  Welcome and Introduction
      David Kramer, Chair, Military and Veterans Law Section

8:20  Oregon Veterans and the Law—Serving Those Who Have Served America
      Ed VanDyke, Oregon Department of Veterans’ Affairs, Salem

8:30  Veterans Justice Officers and Incarcerated Veterans
      ✦ Incarcerated veterans programs
      ✦ Veterans courts and restorative justice
      ✦ The VA’s role in local veterans’ advocacy
      Susan Harrison, Veterans Justice Officer, Eugene

9:00  Criminal Law and Oregon Veterans Courts—Rehabilitation and Renewal
      ✦ Veterans courts
      ✦ Resourcing veterans courts
      ✦ The future of veterans courts in Oregon
      The Honorable Marci Adkisson, Klamath County Circuit Court, Klamath Falls
      The Honorable Eric Bergstrom, Multnomah County Circuit Court, Portland
      The Honorable Julie Frantz, Multnomah County Circuit Court, Portland
      The Honorable Ilisa Rooke-Ley, Lane County Circuit Court, Eugene

10:00 Break

10:15 Traumatic Brain Injury (TBI) and Post-Traumatic Stress Disorder (PTSD): What Every Oregon Lawyer Needs to Know About Veterans and Mental Health
      David Greaves, Ph.D., VA Mental Health and Clinical Neuroscience Division, OHSU Department of Psychiatry, Portland

11:15 The Legal Ethics of Representing Oregon Veterans
      ✦ Mental health challenges: What to do when your veteran client shows signs of PTSD and TBI
      Troy Wood, Oregon State Bar, Tigard

11:45 Lunch

12:45 Before the Lawyers Get Paid—An Overview of Oregon Veteran Benefits
      ✦ Oregon Department of Veterans Affairs
      ✦ The VA claims process
      ✦ Veteran service officers (VSOs)
      Mitch Sparks, Oregon Department of Veterans’ Affairs, Salem
      Eric Ensley, Veterans’ Services Office, Portland

1:15 Veteran Benefit Law—Part I
      Alisha Firestone, A. Firestone Law PC, Salem, and Director, Veterans Legal Clinic, Willamette University College of Law, Salem
      Mark Ronning, Northwest Veterans Law, Salem
2:15 Break

2:30 Veteran Benefit Law—Part II

3:30 The Intersection of Civil Law and Oregon Veterans
   ✦ An overview of “veteran” and “service member” in Oregon law
   ✦ Practice areas and issue spotting
   ✦ The architecture of veterans’ support under Oregon law: House Joint Resolution 202 and the future of veteran support

Daniel Crowe, Veterans’ Justice Project, Metropolitan Public Defender Services, Inc., Portland, and Executive Director, Oregon Veterans Legal Services, Mt. Angel

4:00 Adjourn
The Honorable Marci Adkisson, Klamath County Circuit Court, Klamath Falls. Judge Adkisson has been on the Klamath County Circuit Court bench since 2005 and presiding judge of the Klamath County Veterans Court since 2010.

The Honorable Eric Bergstrom, Multnomah County Circuit Court, Portland.

Daniel Crowe, Veterans’ Justice Project, Metropolitan Public Defender Services, Inc., Portland, and Executive Director, Oregon Veterans Legal Services, Mt. Angel. In 2011, Lieutenant Colonel Crowe founded the Innocent Warrior Project and Oregon Veterans Legal Services, charities that provide assistance to service members and veterans, particularly those struggling with homelessness. He also assumed responsibility for the Veterans’ Justice Project, which is based in the Metropolitan Public Defenders office in Portland. Lieutenant Colonel Crowe previously worked as a criminal defense attorney across Europe, specializing in defending soldiers suffering from post-combat stress. Lieutenant Colonel is Chair-Elect of the Oregon State Bar Military and Veterans Law Section. Lieutenant Colonel Crowe’s awards include the Defense Meritorious Service Medal, the Meritorious Service Medal, and the German Leistungs Abzeichen, in gold.

Eric Ensley, Veterans’ Services Office, Portland.

Alisha Firestone, A. Firestone Law PC, Salem, and Director, Veterans Legal Clinic, Willamette University College of Law, Salem. In her private practice, Ms. Firestone handles veterans’ claims, veterans’ appeals, and criminal record clearing. She also serves as director of the Willamette University College of Law Veterans Legal Clinic. She is a member of the Oregon State Bar Military and Veterans Law Section Executive Committee. Ms. Firestone is an accredited attorney with the Department of Veterans Affairs and is admitted to practice before the Court of Appeals for Veterans Claims.

The Honorable Julie Frantz, Multnomah County Circuit Court, Portland. Judge Frantz has been on the Multnomah County Circuit Court bench since 1995 and served as Chief Criminal Judge from 1997 through 2015. Judge Frantz oversaw the creation of the county’s Mental Health Court in 2008 and Veterans Court/Docket in 2014. She is chair of the Corrections Population Forecasting Committee, a member of the State Public Safety Task Force Member, past president of the Oregon State Bar, a member of Oregon Women Lawyers, immediate past president of the National Association of Women Judges, and a faculty member of the New Judges Training College. Judge Frantz has given numerous presentations on trial practice, ethics, and professionalism.

David Greaves, Ph.D., VA Mental Health and Clinical Neuroscience Division, OHSU Department of Psychiatry, Portland. Dr. Greaves is the Chief of Psychology and the Administrative Director of the Portland VA Healthcare System Mental Health & Clinical Neurosciences Division. He is also an Associate Professor in the Department of Psychiatry at Oregon Health & Science University. Dr. Greaves received his Ph.D. in Clinical Psychology at Brigham Young University in 1991; his doctoral dissertation studied the effectiveness of predicting dangerous behavior in a criminal population. His recent research interests have focused on the psychological factors related to chronic health conditions such as Hepatitis C.

Susan Harrison, Veterans Justice Officer, Eugene. Ms. Harrison works on a veterans docket in the mental health treatment courts in Douglas County, Oregon, with Judge Garrison and in Del Norte County, California, with Judge McElfresh. She also coordinates space and veteran referrals to a local law office, Access the Law, to provide a free veterans’ legal clinic in Eugene to assist veterans with legal issues. She began her VA career in 2006 as a Health Care for Homeless Veterans Outreach Social Worker, where she expanded Homeless Veteran Outreach to six counties in southwest Oregon and conducted “inreach” into the Oregon State Penitentiary. Ms. Harrison holds a Bachelors in Psychology from the University of Oregon and a Masters in Social Work from Portland State University.
Mark Ronning, *Northwest Veterans Law, Salem*. Mr. Ronning focuses his practice on VA disability claim appeals, claims before the Board for Correction of Military Records, military administrative and criminal law defense, and expert witness testimony on division of military benefits on divorce. Mr. Ronning founded Northwest Veterans Law to serve the legal needs of those who have given for their country and to establish the first regional legal network to serve the unique needs of Oregon’s military and veteran population. Mr. Ronning previously spent 15 years as a Judge Advocate, serving as legal advisor to battalions, brigades, and divisions in garrison, overseas, and combat environments. He is chair of the Oregon State Bar Military and Veterans Law Section, a member of the House of Delegates, and a member of the International Law Section. He is also a member of the National Association of Veteran Advocates.

The Honorable Ilisa Rooke-Ley, *Lane County Circuit Court, Eugene*. Judge Rooke-Ley presides over the Lane County Adult and Veterans Treatment Courts. Prior to her appointment and subsequent election to the Lane County Circuit Court bench in 2010, Judge Rooke-Ley worked as a lawyer for Public Defender Services of Lane County in Eugene, representing adult criminal defendants, children in delinquency cases, and parties in dependency cases. She is a past member of the Lane County Legal Aid board.

Mitch Sparks, *Oregon Department of Veterans’ Affairs, Salem*.

Ed VanDyke, *Oregon Department of Veterans’ Affairs, Salem*. Mr. Van Dyke is Operations Director of the Oregon Department of Veterans’ Affairs. He began his career working for the department as a Veteran Service Officer in May 2002 upon his retirement from the United States Army. He was promoted to Portland Claims Manager on March 8, 2004, and then to his current position in January 2013.

Troy Wood, *Oregon State Bar, Tigard*. Mr. Wood is an assistant general counsel at the Oregon State Bar Client Assistance Office. His legal experience has included personal injury, insurance defense and business litigation, and real estate and business transactions.
Chapter 1

US Department of Veterans Affairs Veteran Justice Outreach Program Brochure

Susan Harrison
Veterans Justice Officer
Eugene, Oregon
Chapter 1—US Department of Veterans Affairs Veteran Justice Outreach Program Brochure

Representing Military Veterans in Oregon

Three Main Focus Areas of the Veteran Justice Program

1. **Courts and Attorneys**
   - Provide information and education about Veterans’ issues such as Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and the VA treatment services available. Develop and implement Veteran Treatment Courts (VTCs).

2. **Law Enforcement**
   - Provide training to local law enforcement on Veterans’ issues and strategies to help increase positive outcomes of interactions between Law Enforcement Officers and Veterans.

3. **Jails**
   - Develop methods to identify Veterans who are arrested/incarcerated, enroll VA eligible Veterans, Conduct Mental Health Assessments in jail, facilitate access to VA services upon release.

What a VJO Can Do:

- Serve Veterans of all eras
- Identify appropriate VA and non-VA resources and make referrals
- With Veteran’s signed consent a VJO can communicate treatment essentials of VA care to the court, (attendance, progress, UA testing, and discharge planning)
- Function as a court team member (FREELegal Clinic to increase access to attorney services)
- Provide VJO services to eligible veterans in Coos, Curry, Douglas, Lane, Linn, and Benton counties in Oregon and Del Norte County, CA
- Develop Veteran Treatment Courts (VTCs)
- Provide training to local law enforcement on Veterans’ issues
- Develop methods to identify Veterans who are arrested/incarcerated, enroll VA eligible Veterans
- Conduct Mental Health Assessments in jail
- Facilitate access to VA services upon release

What a VJO Can’t Do:

- Serve VHA ineligible Veterans
- Forensic psychiatric/psychological evaluations for the court
- Accept custody of incarcerated veterans
- Guarantee program acceptance
- Write lengthy court reports or complete Diversion paperwork
- Advocate for legislation
- Decide criminal justice criteria for Veteran Court participation and/or determine who gains admission to specialty treatment courts

To schedule a Law Enforcement Training or an informational meeting in Oregon counties of Coos, Curry, Douglas, Lane, Linn, or Benton or Del Norte County, California Contact VJO, Susan Harrison 541/242-0445 OR 541/520-3447

Revised Jan 2016

Department of Veterans Affairs is committed to preventing homelessness among Veterans by advocating for treatment versus incarceration through the development of the Veteran Justice Outreach (VJO) Program.

VJO Initiative:
The purpose of the VJO Initiative is to avoid the unnecessary criminalization of mental illness and extended incarceration among Veterans by ensuring that eligible Veterans in contact with the criminal justice system have access to VA Medical, Mental Health, and Substance Abuse treatment services.

Source: Department of Veterans Affairs, Under Secretary for Health’s Information Letter, April 30, 2009.
Representing Military Veterans in Oregon

VA Roseburg Healthcare System

Behavioral Health Recovery & Reintegration Services
211 East 7th Ave #A-220
Eugene, Oregon 97401

Veteran Justice Outreach Program
Susan Harrison, LCSW
211 East 7th Ave #A-220
Eugene, Oregon 97401
(541) 242-0445 office
(541) 520-3447 cell
(541) 465-6602 fax

To make a veteran referral, or schedule a Law Enforcement Training/Informational meeting, please contact me at one of the numbers listed above.

The United States Department of Veterans Affairs

The VA Mission
“To care for him who shall have borne the battle, and for his widow and his orphan”

Abraham Lincoln
2nd Inaugural Address
4 March 1865

US Department of Veterans Affairs
Veteran Justice Outreach Program
Chapter 2A

Multnomah County Veterans
Docket and Justice Outreach Project
Memorandum of Understanding

THE HONORABLE JULIE FRANTZ
Multnomah County Circuit Court
Portland, Oregon
Chapter 2A—Multnomah County Veterans Docket/Justice Outreach Project Memo of Understanding

Multnomah County Veterans Docket
and Justice Outreach Project
Memorandum of Understanding

The parties to this Memorandum of Understanding (MOU) endorse the mission, goals and objectives set forth below through the creation of the Veterans Docket and Justice Outreach Project for Multnomah County Veterans encountering the criminal justice system:

- To create a coordinated approach within the local criminal justice system for identifying military veterans, recognizing and assessing their unique needs, and systematically referring them to specialized services currently available in the community;

- To reduce future criminal behavior by better addressing the criminal risk factors and sources of instability for military veterans involved in the criminal justice system;

- To take into consideration the services provided to a veteran through the Veterans Health Administration, as well as other treatment or rehabilitative services available in the community, in determining the appropriate sentence if guilt is established for an eligible offense. (The available services may also be a factor in determining the length of a prison sentence for an eligible offense where probation is not an option);

- To provide better access to care for military veterans living in our community.

Eligibility Criteria

For a veteran to be deemed an “Eligible Veteran” for inclusion in this program, the veteran must:

- Qualify for Veterans Health Administration (VHA) services, and
- Be charged with an “Eligible Offense” as defined below.

“Eligibility for VHA services” shall be determined through the Veterans Health Administration, facilitated by the Justice Outreach staff, consistent with information provided in the DD Form 214.

“Eligible offense:” The Multnomah County Veterans Docket and Justice Outreach Project includes all felony crimes except those listed below. Participation in the Multnomah County Justice Reinvestment Program (MCJRP) does not preclude participation in the Multnomah County Veterans Docket and Justice Center Outreach.
Eligibility includes veterans who, with the agreement of the state, transfer their existing felony probations (where the underlying offense is eligible under the stated criteria) on to the Veterans’ Docket.

The following offenses are excluded from participation in the Multnomah County Veterans Docket and Justice Outreach Project:

- Aggravated Murder and Murder
- Attempted Aggravated Murder and Attempted Murder
- Manslaughter in the First and Second Degree
- Criminally Negligent Homicide
- Aggravated Vehicular Homicide
- Failure to Perform the Duties of a Driver (death involved)
- Any other death-involved offense (including Len Bias-type cases)
- Arson in the First Degree
- Assault in the First Degree
- Kidnapping in the First Degree
- Robbery in the First Degree
- Child victim under age 14 offenses
- Sex Crimes/Offenses (including FRSO charges)

Identification as a Veteran: May occur at the time of booking through information known to the District Attorney’s office, as a result of information provided though the LSCMI, and/or from information the defendant authorizes be released.

- If the eligibility criteria is met, the veteran may only be considered for inclusion in the Multnomah County Veterans Docket and Justice Outreach Project if the veteran signs a Release of Information (ROI) after consultation with counsel, if represented.

- A copy of the information provided in response to the ROI shall be provided to the District Attorney’s office upon receipt by the defense attorney.

- The information provided in response to the ROI shall only be used for purposes of settlement negotiations (and not at trial by the State, unless introduced by the defense after timely notice of the intent to use this information at trial is provided to the State), mitigation and presentation of relevant factors at sentencing, and for ongoing supervision on that case.

- If guilt is established by a conviction at trial, rather than by entry of a plea of guilty or no contest, the veteran must sign a ROI to be considered for the Veterans Docket.
Duties and Responsibilities of the Individual Partners to this MOU:

The Multnomah County Sheriff’s Office will:

- Identify veterans at the time of booking.
- Work collaboratively with the Veterans Justice Outreach staff, and when possible, arrange with the Veterans Justice Outreach staff to assess needs and eligibility for services.

The District Attorney’s Office will:

- Identify cases in which the defendants are veterans when known to the District Attorney’s Office, and so advise defense counsel.
- Consider the services available to veterans through VHA and the community when engaging in plea negotiations and in making sentence recommendations.
- Consult with the named victim(s) to obtain their input regarding disposition of the offenses alleged, and ensure the named victims are advised of all critical proceeding stages (e.g., release hearings, plea dates, sentencing hearings, probation violation hearings, etc.)
- For those placed on probation, consider the information provided through the VHA and Outreach Services when determining what recommendation to make to the court if the defendant is found in willful violation of probation by the Court.

The Defense Attorney will:

- Identify a defendant as a veteran at the time of assuming representation.
- Discuss with the defendant if he/she wishes to be identified as a veteran and access services available to veterans through the VHA if deemed eligible.
- Facilitate the Release of Information from the VHA to obtain the DD Form 214 and the veteran’s records.
- Forward the DD Form 214 to the District Attorney’s Office upon receipt if an eligible defendant elects to be identified as a veteran.
- Assemble all the information obtained in response to the ROI submitted to the VHA and forward the information to the District Attorney’s office.
- Engage the Veterans Justice Outreach staff through the VHA to consult with the defendant and defense counsel re: available services and programs in the community for which the defendant is eligible.
- Where appropriate, provide a mitigation package containing the information obtained through the VHA, noting the available services and programs, to the District Attorney’s Office and the Court for use in negotiations in an effort to resolve pending criminal charges or alleged probation violations.

The Veterans Justice Outreach staff will:

- Assist in eligibility determinations for VHA services and help facilitate enrollment of eligible veterans in such services.
Chapter 2A—Multnomah County Veterans Docket/Justice Outreach Project Memo of Understanding

- Assist in obtaining the DD Form 214 document.
- Provide the veteran’s DD Form 214 to defense counsel, who shall forward a copy to the District Attorney’s Office if the defendant meets VHA criteria for services.

- Verify the veteran meets the criteria to be declared a veteran eligible to receive VHA services.
- Assist with the scheduling of treatment appointments for eligible veterans and facilitate referrals for eligible VHA services.
- Provide support to the defendant to facilitate engagement in VHA services, and follow through with treatment and other services available through the VHA.
- Be available as a resource to coordinate VHA information, records, and assessment materials needed by the defense attorney, District Attorney’s Office (upon consent of the defense) and the court throughout the pendency of individual veteran’s case, pursuant to a court order or a ROI signed by the veteran.
- Attend the probation violation hearings on the Veterans Docket.
- Provide information to the Court upon the request to which the defense attorney and the District Attorney’s office shall also have access.

The Multnomah County Circuit Court will:

- Create a Veterans Probation Docket and Procedures for Case Disposition:
  - Set a recurring day and time each month for the probation hearings, and
  - During the same block of time, the designated Veterans Court judge shall schedule judicial settlement conferences, pleas and sentencings;
    - (note: the regular convening of the docket will be scheduled at a consistent time designated by the judge presiding over this docket)

- Designate, through the presiding judge, a circuit court judge to be the primary judge to oversee the Multnomah County Veterans Docket, and one or two other judges in the absence or unavailability of the primary judge, all of whom are knowledgeable about the specific needs of and services available in our community to veterans.
  - The designated judge(s), with the objective of establishing rapport with the veteran defendant and of guiding the negotiations, shall participate in the judicial settlement conferences, preside over the entry of plea and at sentencing, and hear any subsequent probation violations that appear on the Veterans Docket.

  - The designated judge shall consider the information provided through the Veterans Justice Outreach Staff, along with that of the probation officer, the defense attorney, the District Attorney’s Office and the victim, in determining the appropriate disposition if the defendant is found in willful violation of probation.
The Multnomah County Department of Community Justice will:

- Provide specialized probation/parole officers in each field office and within each specialty caseload who are knowledgeable about working with veterans and about the community resources available for VHA qualified veterans.
- Coordinate available services and programs with the designated VHA support person.
- Integrate the intense level of supervision (first 120 days) which shall be required in specified cases under the Multnomah County Justice Reinvestment Project with the supervision duties of the designated probation officer who is knowledgeable about the veteran’s issues.
- Attend in person the probation violation hearings and be available by telephone for other status matters.

The Veterans Docket and Justice Outreach Project has been developed through a collaborative effort of the Multnomah County Department of Community Justice, the Multnomah County Circuit Court, the Veterans Administration, Office Multnomah County District Attorney’s Office, the Criminal Defense Bar (through the involvement of the Executive Director of the Metropolitan Public Defender) and the Multnomah County Sheriff’s Office. Each of these entities intends to remain actively engaged in planning, designing and facilitating these enhanced services. This Veterans Project has the support of the Multnomah County Board of Commissioners and the Local Public Safety Coordination Council.

This MOU is a non-binding collaborative effort to use the treatment modalities of the Veterans Health Administration and the resources of the local judicial system to promote public safety, reduce recidivism and substance abuse, promote mental health, encourage victim participation, and achieve long-term benefits for individual veterans and society at large.
Chapter 2B

Lane County Veterans Treatment Court—Presentation Slides

The Honorable Ilisa Roeke-Ley
Lane County Circuit Court
Eugene, Oregon
Mission Statement

The mission of the Lane County Veterans Treatment Court is to promote public safety by providing veterans a court-supervised collaborative response to criminal behavior that is designed to return them to a productive and law-abiding life.
Overview

- Implemented in 2011
- Partnership between Lane County Circuit Court, DA’s office, Public Defender Services of Lane County, Veterans Administration, and other public and private agencies and organizations (a.k.a. “The Team”)
- Blend of criminal case processing and treatment
- Felony and misdemeanor diversion program (ORS 475.245 and ORS 137.533) (potential for dismissal of charge(s) upon successful completion of the program)
- Accepts participants as a condition of probation, referred by their supervising probation officer or by the Circuit Court judge at sentencing. All participants are screened for eligibility by “The Team.”
- Program capacity: approximately 25 individuals (may vary depending on funding)
- Since its inception in 2011, there have been 64 LCVTC participants (14 of whom are still in the program) and 31 graduates (62% graduation rate).
Relevant Law & Guidelines

- ORS 475.245 – Conditional discharge (felony)
- ORS 137.533 – Probation without entering judgment of guilt (misdemeanor)
- ORS 135.898 – Diversion agreement involving service member charged with domestic violence
- Oregon Criminal Justice Commission (OCJC), Oregon Adult Drug Court Standards
- Ten Key Components of Veterans Treatment Court, National Clearinghouse for Veterans Treatment Courts at the National Association of Drug Court Professionals
Goals

- Reduce veteran contacts with the criminal justice system
- Reduce costs associated with criminal case processing and re-arrest
- Introduce veterans to an ongoing process of recovery
- Promote self-sufficiency and empower veterans to become responsible and productive members of the community
- Reduce jail overcrowding
Objectives

- Ensure all participants receive evidence-based and data driven services
- Provide ancillary services that reduce recidivism and achieve long term recovery
- Provide participants with sufficient court and probationary supervision necessary to gain compliance with all program requirements
- Ensure program operates in a manner consistent with principles of justice, protects public safety, and preserves the constitutional rights of all participants
- Build and maintain a program to ensure veterans are identified and assessed for risk and need
- Divert eligible veteran offenders out of the traditional criminal justice system into appropriate treatment
- Closely monitor veterans’ progress toward recovery with frequent drug/alcohol (observed and random UAs) testing and frequent court appearances
- Consistently and rapidly apply positive and/or negative reinforcement for compliance or non-compliance
Program Administration

Veterans Treatment Court Team
Advisory Board

Veterans Treatment Court Team

- LCVTC Judge: Ilisa Rooke-Ley
- Prosecuting Attorney: James Tierney
- Defense Attorney: Jordon Huppert
- Treatment Provider: Emergence
- LCVTC Coordinator: Danielle Hanson
- Probation Officer: Larry Evenson
- Law Enforcement Officers: Sgt. Matt Lowen, EPD
- Veterans Justice Outreach Coordinator: Susan Harrison
- Volunteer Veteran Mentor Coordinator: Michael Pence

OCJC Specialty Court Standard 1-1.
Advisory Board

- Oversees operations of LCVTC and establishes and maintains a written plan that addresses sustainability of the court’s operations, resources, information management, and evaluation needs.
  
  *OCJC Specialty Court Standard 10-1.*

- Meets at least quarterly.
  
  *OCJC Specialty Court Standard 10-1, 10-2.*

- Meets quarterly to review and evaluate the program and to advise the LCVTC on any outstanding issues

- Provides recommendations regarding the adoption of or changes to LCVTC operations and policy manual

Advisory Board Members

- Judge
- LCVTC Coordinator
- Representatives from the District Attorney and Public Defender Service offices
- Law Enforcement Representatives
- Probation Representative
- Director of Emergence
- Veterans Justice Outreach Coordinator
- Lane County Veterans Services Representative
- Access the Law (501(c)(3))
- Vet Center Representative
- Veteran Mentor Coordinator
- Marine Corps League Representative
- Sponsors, Inc. Representative
- Lane Council of Governments Representative
Community Partners

Volunteer Veteran Mentor Coordinator
 Volunteer Veteran Mentors
 Lane County Vet Center
 Access the Law
 Child Welfare

Veteran Mentor Coordinator

- Recruits volunteer veteran mentors
- Screens prospective volunteer veteran mentor candidates
- Educates the public about Lane County Veterans Treatment Court and the role of volunteers
- Assists in retention of veteran mentors
- Organizes and conducts trainings for veteran mentors
- Plans and implements veteran mentor recognition activities
Veteran Mentors

- Provide ongoing support and encouragement to program participants
- Assist veterans with court proceedings
- Maintain weekly communication with each LCVTC participant

Vet Centers (Lane County Vet Center)

- For veterans of the U.S. Armed Forces who have served in a combat zone
- Located in communities across the United States to help veterans and their families with readjustment counseling and outreach services
- Staffed by small multi-disciplinary teams of providers—many of whom are combat veterans themselves and who work to help veterans readjust and transition into the civilian lifestyle
- Provide services that include individual and group counseling, military sexual trauma counseling and referrals, and substance abuse assessments
- Free and confidential for veterans and their families
Access the Law

- 501(C) (3) organization
- LCVTC has partnered with Access the Law, a nonprofit law firm that provides free legal consultations to veterans and represents veterans at reduced rates.
- Through Access the Law’s Veterans’ Fund, donors may contribute monetary donations and tangible goods for the benefit of the LCVTC and its participants.

OCJC Specialty Court Standard 10-4.

Child Welfare

- Department of Human Services (DHS) when veterans have a child involved in the child welfare system
Program Structure & Orientation

Program Structure: Policy Statement

- Lane County Veterans Treatment Court integrates court supervision and an extensive network of treatment services and community supports.

- The Program offers two Tracks: the Alpha Track and Bravo Track.

- **Alpha Track**: Participants who are assessed as having moderate to high risk and need. Four-level structured approach with the first level focusing on stabilization, orientation, and engagement, and the last focusing on participant independence and community reintegration.

- **Bravo Track**: Participants who are assessed as having low risk and need. 

- **Bravo Track** participants are not mixed with Alpha Track participants.

OJCJ Specialty Court Standard 3-S. 4-S.
Program Orientation:
Policy Statement

All participants of the Lane County Veterans Treatment Court are informed of the details and possible consequences regarding the choice to accept or decline participation in the LCVTC through a structured orientation process.

*OJCJ Specialty Court Standard 3-7.*

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Program Orientation:
Procedure

- **Conditional Discharge**
  - Orientation through Public Defender Services of Lane County.
  - The two-week opt-in period allows time for the veteran to learn about and decide whether the program can serve him/her and for the LCVTC team to determine whether the veteran is appropriate for the program. During those two weeks, the veteran completes an assessment with the treatment provider and an orientation with the LCVTC coordinator and/or probation officer.
  - Stipulated facts trial upon entry, if deemed appropriate.

- **Condition of Probation**
  - Veterans who enter LCVTC as a condition of probation receive an orientation within one week of their first appearance.
  - The Lane County Treatment Court Coordinator is responsible for ensuring that all participants have been informed of the details of the LCVTC program.

*OJC Specialty Court Standards 2-8.*
Program Eligibility & Ineligibility

Program Eligibility (not an exhaustive list)

- Charged with Unlawful Possession of a Controlled Substance (UPCS) Schedule 1 or 2, 3 and/or 4; and/or Attempted UPCS Schedule 1 or 2; Assault 4 misdemeanor (DV or not)
- Possessed only a small amount of a drug consistent with personal use or there is a small, unsophisticated marijuana grow operation involved
- Not currently enrolled / not previously participated in the Lane County Veterans Treatment Court program within the past five years, if referred by the District Attorney’s Office, or within the past two years if entering as a condition of their probation; AND applicant has not previously received a conditional discharge that was dismissed, unless entering as a condition of their probation
- Not a drug dealer or manufacturer
Program Eligibility (continued)

- May be on felony probation in another jurisdiction if supervision transferred to Lane County
- No other pending case(s) that carries a presumptive prison sentence
- If convicted of a violent felony, eligibility at DA’s discretion
- Not associated with a gang or criminal enterprise
- Current or prior military involvement, regardless of veterans benefit eligibility status

Program Ineligibility

- Severe mental health issues that cannot be effectively treated by LCVTC treatment provider or partners
- Criminal history, mental health, or other circumstances that threaten safety of other LCVTC participants
Treatment Services

Treatment Services: Emergence

- Group and one-on-one counseling
- Mental health counseling
- Family counseling
- Anger management
- Drug testing
- Referrals
  - Employment
  - Housing
  - Residential
  - Education (post-secondary)
  - Medical
Treatment Services: Veterans Health Administration

Veterans Health Administration
- Provides screening and linkage to multiple inpatient care options for participants assessed as needing a higher level of care

Veterans Judicial Outreach Coordinator
- Reports on veterans’ progress including non-compliance issues as they occur via written report and Treatment Team staffing meetings
- Meets with veterans in custody after arrest and provides them with information about Veteran’s Treatment Court
- Completes HOMES (needs) assessment and provides it to LCVTC Team
- Coordinates VA services and benefits with participant

Veterans Treatment Court Levels
### Veterans Treatment Court Levels

<table>
<thead>
<tr>
<th>Level</th>
<th>Weeks in Level</th>
<th>Minimum Court Review</th>
<th>Requirements to Advance</th>
</tr>
</thead>
</table>
| Level RED: Engagement | 4 weeks minimum | Every week           | • Submit essay questions  
• Minimum 7 days sanction-free |
| Level WHITE: Intensive Treatment | 12 weeks minimum | Every 2 weeks       | • 30 days sanction-free  
• 30 consecutive days documented clean time  
• Submit level up questions and wellness proposal |
| Level BLUE: Reclaiming Self | 24 weeks minimum | Every 3 weeks       | • Complete all treatment work  
• 30 days sanction-free  
• 30 consecutive days documented clean time  
• Verified employment, enrolled and attending school, or, if disabled, volunteer in community  
• Submit level up questions and give back proposal |
| Level GOLD: After Care/Transition | 12 weeks minimum | Every 4 weeks       | • Complete Give Back project  
• 120 consecutive days documented clean time  
• 30 days sanction-free  
• Complete graduation survey and questions  
• GRADUATION |

### Incentives & Sanctions
Incentives

- LOW
  - Verbal praise
  - Kudos
  - Applause
  - Support rewards
  - Name on “100%” list

- MODERATE
  - Court date privileges
  - Life skills
  - Incentive drawing

- HIGH
  - Travel
  - Community role
  - Decision coins
  - Commencement ceremony
  - Legal incentive (i.e., dismissal of charge upon graduation)

Sanctions

- LOW
  - Verbal admonishments
  - Letter of apology
  - Written essay reflection
  - Daily activity log
  - Journaling
  - Life skills assignments
  - Court sit sanction
  - Community restriction

- MODERATE
  - More frequent court appearance
  - Increased probation contact
  - Community service
  - Parole & probation sit sanction

- HIGH
  - Jail sit in
  - Road crew
  - Jail report for overnight custody
  - Jail taken into custody directly from court
Program Completion

Graduation Requirements
(minimum)

- At least 12 months in the Lane County Veterans Treatment Court
- Completion of all treatment requirements
- Recommendation for graduation by all treatment providers, probation and parole, and the court team
- At least 120 days verifiable abstinence prior to graduation
- Approval of LCVTC judge (that the veteran participant has gained the necessary tools to continue in recovery and be a responsible member of the community)
Reasons for Termination

- Committing a serious program violation (e.g., delivering CS to another participant, posing a threat to participants/staff, falsifying a drug test)
- Engaging in serious threatening behavior
- Failing to engage in the program
- Committing a new crime
- Probation revocation
- Continued use of controlled substance
- Exhaustion of program resources
Veterans Court Resources

- Resources for Court Professionals, Justice for Vets (Apr. 29, 2016), [http://www.justiceforvets.org/resources](http://www.justiceforvets.org/resources).


- 10 Key Components for Veterans Treatment Courts, National Drug Resource Center (Apr. 29, 2016), [http://www.ndcrc.org/content/10-key-components-veterans-treatment-courts](http://www.ndcrc.org/content/10-key-components-veterans-treatment-courts)

Contact Information
Contact Information

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Myths about Vets and MH

- “All Vets struggle with mental health issues”
- “Only Veterans who have been in combat can develop PTSD”
- “The military discourages soldiers from seeking mental health care.”
Historical Accounts of PTSD

- Swiss military physicians (1678) penned “nostalgia”
- Civil War physicians (1860s) identified “soldier’s heart”
- Russian Army (1905) first to see sx as legitimate medical condition
- Other terms: War Neurosis, Shellshock, Battle Fatigue, PTSD (1980)
- Lifetime prevalence for combat vets = 39%

Quick Facts

- The majority of all individuals (60%) experience a significant trauma in their lifetime, though rate of PTSD is around 8.7%.
- PTSD is unique disorder in which genesis can be pinpointed
- Rates for recent wars:
  - Iraq/Afghanistan = 15-20%, Desert Storm = 10%, Vietnam = 30%
- Childhood trauma > Late life trauma
Post-Traumatic Stress Response

- **Typical or normal** response to an extraordinary experience.
- The “fight, flight, or freeze” survival response: A basic biological adaptation to threat
- Also, changes in emotions, thoughts, and sensory experiences.
- Normal recovery is a gradual process that comes with integration back into familiar life events over several weeks or months. Most have full recovery.

Prolonged Traumatic Stress Response

- The person experiencing trauma may remain in “survival mode” for period of time
- “Re-calibration” of emotions, etc. is common for those under constant threat (warzone)
  - Military men/women unlikely to abandon the survival mode if additional deployments are pending
- When symptoms persist, this leads to PTSD
Trauma

“Exposure to actual or threatened death, serious injury, or sexual violence in one of the following ways:

- Directly experiencing the traumatic event
- Witnessing, in person, the event occur to others
- Learning the event happened to close family or friend*
- Repeated or extreme exposure to adverse details of traumatic event.*”

(DSM-5)

Aftermath...Four domains

- Intrusion Symptoms (e.g. unwanted thoughts)
- Avoidance behavior (e.g. avoid external reminders)
- Negative change in Mood and Cognition* (e.g., feelings of fear, anger, guilt)
- Changes in arousal and reactivity (e.g. startle response)
Re-experiencing the Trauma

- Unwanted, intrusive memories
- Recurring dreams
- Intense distress when reminded of the event
- A sense that the trauma is recurring

Avoidance

- Tries to avoid any discussion related to trauma
- Avoids places, activities, etc. related to trauma
- Cannot recall details of trauma
Changes in Mood and Cognition

- Confused about direction & meaning in life
- Blaming self for warzone actions
- Loss of “innocence” and belief in former values
- Irritability and anger
- Anxiety, Depression and stress
- Social Withdrawal & Anhedonia
- Cognitive problems
- Increased use of alcohol or drugs

Increased Arousal and Heightened Reactivity

- We like to think of ourselves as a big dominant predator type.

No teeth
No claws
Slow
40lbs of meat

Snack Food
Our biological wiring is more consistent to that of a prey species than a predator species.

We respond to threats with predictable adaptations

- Arousal: Fight, Flight, or Freeze
- Changes in thinking (automatic remembering)
- Learning Cues: avoiding the bad stuff to survive
Fight, Flight, or Freeze Response

- Attack the threat
- Run from the threat
- Not be seen by the threat

Automatic Biological Response to Stress

- Blood flow increases; increased heart rate and blood pressure
- Chemical changes in body (adrenaline)
- Muscles tense in preparation for action
- Digestion and immune system shut down since they are not a priority
- These responses constitute biological underpinnings of anger and fear
Example of Stress Response

Soldiers drive down the middle of the road at full speed, being very aware of parked cars, overpasses, etc.

Driving down any road, your body prepares for danger, whether danger is there or not.
Long after deployment, veterans experience driving-related stress, fear, rage, or a need for speed.
Increased Risks Related to PTSD

- Other psychiatric conditions: 80% more likely
- TBI: 48% concurrence
- Unemployment: 50% more likely
- Marital problems: 60% more likely
- Academic failure: 40% more likely


Gender Conditional risks (Kessler et al, 1995)

- Men are exposed to more traumatic events
- Women are more likely to develop PTSD as result of exposure (20 vs. 8%)
- Different traumas lead to different rates of PTSD by gender
PTSD as manifest in everyday life

- Family or marital discord
- Problems at work
- Reports of increased reckless or dangerous behaviors
- Emotional problems
- Substance abuse

Treatment for PTSD
Treatment follow causation

- Adaptive response gone bad
- Unpredictability and uncontrollability of event is generalized
- Brain’s method of storing survival information is active
- Hindsight perspective vs. real-time perspective effects functioning

Today’s Treatments

- Evidence-based psychotherapy addresses trauma directly
- Time-limited treatments preferred
- “Prolonged Exposure” or “Cognitive Processing Therapy” used at VA
- Intent: connect directly with emotions of trauma; correct cognitions around trauma; allow natural recovery to occur
Perceptions of Trauma: Stuck Points

- Fractured beliefs about the world (justice, personal abilities, etc)
- **Assimilation**: Change memories or interpretation to fit old assumptions
  - “my fault…” can’t remember…”
  - Easier to change the event than beliefs
- **Accommodation**: Change belief system—this is desired, if not done to an extreme
  - “the whole world is dangerous…”

Pharmacotherapy

- SSRIs are the only FDA approved medications for PTSD
- Some evidence of success with Topiramate (mood stabilizer)
- Prazosin (HTN med) is effective treatment for nightmares
- Antipsychotics and Benzodiazepines not shown to be helpful
Traumatic Brain Injury (TBI)

- Product of physical trauma to the head
- Not necessarily from direct contact
- Recent attention in NFL for their version (CTE)
Screening for TBI

- During any of your OIF/OEF deployments did you experience any of the following events? Blast or explosion, MVA or crash, Fragment or bullet wound above the shoulders, fall, blow to the head, other head injury?

- Did you have any of these symptoms immediately after? Knocked out? Being dazed confused or seeing stars? Not remembering the event? Concussion? Head injury?

- Did any of these problems begin or get worse after? Memory problems, balance or dizziness, sensitivity to bright light, irritability, headaches, sleep problems

- In the past week, have you had any of the symptoms above?

TBI labeled the “Signature Injury” for current war

- IEDs were the most effective weapon used by enemy in Iraq
- US-led troops also use bombs as offensive weapons
- Advances in helmets and body armor (save lives, but don’t prevent trauma)
- War has lasted 14 years!
Incidents of TBI

- Early in the war, Camp Pendleton, CA, Fort Bragg, NC, and Fort Hood, TX found between 10-20% of returning soldiers suffered brain injuries, most from IEDs.
- In later reports around 15-20% of all OIF/OEF veterans meeting criteria for TBI (WRAMC, 2006; Hoge et al., 2008)
- At Walter Reed Medical Center in Washington, D.C., 30% of soldiers admitted had a brain injury.
- Still secondary to PTSD in public awareness

Mild TBI

- Most common level of TBI
- Less easy to identify in field
- Undiagnosed problem for many veterans
- Diagnosis a challenge since it is often established retrospectively
  - Brain scans are typically normal
  - Often diagnosed without medical evaluation
  - Often based on patients’ report
Common *Physical* symptoms associated with TBI

- Headaches
- Dizziness
- Balance/coordination changes
- Pain
- Low Energy
- Fatigue
- Sleep Disturbance (high rate)

Common *Emotional* symptoms associated with TBI

- Anxiety
- Depression
- Irritability
- Emotional Dysregulation
- Less range of Emotion
- Less Sensitivity to Other’s Emotions
- Part of this is trying to adjust to life with the injury
Common **Cognitive** symptoms associated with TBI

- Memory (short-term)
- Attention (complex tasks, distraction)
- Information processing efficiency
- Word finding problems
- Executive functions (e.g. planning, organizing, multi-tasking, strategizing)

Common **Behavioral** symptoms associated with TBI

- Impulsivity
- Disinhibition (less filter)
- Apathy
- Lack of initiation
- Lack of spontaneity
Veterans and Legal Issues

Vets in the Legal System

- Overrepresented in prisons (9% vs 7% of population).
- Studies from 1980s suggested 33% of Vets with PTSD has multiple arrests.
- PTSD itself does not lead to criminal behavior.
Does TBI lead to increased criminal activity?

- Study (1980s data from Australia)
  - “Relative to their community controls, past TBI sufferers had *two times* the rate of both criminal convictions and mental illness.”
  - Harder to show causation

Violent Behavior

- Post 9/11 PTSD Veterans: 8.6 to 19.5%
  - Rate is 3.0 to 6.4% for non-PTSD Vets
- Study from 1980s looked at IPV
  - 33% PTSD Vets v. 13.5 non-PTSD Vets reported IPV
  - May be a product of increased substance use
Attorney Perspectives

- PTSD or TBI as a defense
  - Direct causal relationship from trauma
  - TBI causation less clear
  - Limited success with this defense?

Veterans Courts

- Relatively new in Oregon
- Successful alternative
- Multiple agencies and resources involved
Future Issues

- Current cohort of returning soldiers vulnerable to PTSD
- Evidence-based therapies gaining momentum as studies continue to provide evidence of success
- Trauma not just a concern for Veterans

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Chapter 4

Representing Clients with Diminished Capacity—Presentation Slides

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The purpose of this presentation is to make lawyers familiar with the Rules of Professional Conduct (RPC) that are implicated when they represent clients with diminished capacity.

We will be focusing on RPC 1.14 and its impact on other core rules that regulate all attorney-client relationships, such as communication (RPC 1.4) and confidentiality (RPC 1.6).
Representing Military Veterans in Oregon

Chapter 4—Representing Clients with Diminished Capacity—Presentation Slides

RPC 1.14

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

The Lawyer-Client Relationship

• The ABA Commentary for Model Rule 1.14 is helpful in understanding the lawyer’s role when representing a client with diminished capacity.
• ABA Model Rule, Comment 2 implies that while representing a client with diminished capacity, a lawyer should accord the represented person the status of client, especially in maintaining communications.
• ABA Model Rule, Comment 3 provides that family members or other persons may be included in communications with clients. However, except for protective action authorized by RPC 1.14(b), the lawyer must look to the client (rather than the other person) to make decisions on the client’s behalf.
• When representing a client with diminished capacity, RPC 1.14(a) requires a lawyer to, as far as reasonably possible, maintain a normal client-lawyer relationship.

• When a client cannot act in the client’s own interests and is at risk of substantial physical, financial or other harm, RPC 1.14(b) allows the lawyer to take reasonably necessary protective action to protect the client, including seeking the appointment of a guardian or conservator.

• RPC 1.14(b) gives a spectrum from guardian and conservators at one end, and involving individuals or entities who can assist in communicating with the client at the other end.

• When deciding whether to take protective action, or the extent of protective action needed, ABA Model Rule 1.14, Comment [5] says that a lawyer should be guided by the following:
  • the wishes and values of the client,
  • the client’s best interests,
  • the goals of intruding into the client’s decision-making autonomy to the least extent feasible,
  • maximizing the client’s capacities, and
  • respect for the client’s family and social connections.
Client’s Capacity

- However, if you are representing a client with a known disability that could implicate diminished capacity, you must assess the client’s capacity.
- Assessment of capacity does not end after creation of the lawyer-client relationship. Instead, it should be assessed continually throughout the relationship.

Assessing Capacity

- Various practices within the law require that a client’s capacity be verified by the lawyer (*this may require an evaluation by an expert*).
- One area with developed law on this subject is estate planning:
  - One may have limited intelligence, but still be competent enough to select the persons whom he or she wished to receive his or her worldly goods at his or her death and to know that an instrument he or she signs will effectuate that intent. *See In re: Walther’s Estate*, 177 OR 382 (1945) and *Meister v. Finley*, 208 OR 223.
A seminal case for Oregon estate planners is *Golden v. Stephen*, 5 Or App 547 (1971). In *Golden*, the court put forth the following requirements for testamentary capacity:

- The person must be able to understand the nature of the act in which he or she is engaged (i.e. executing a will or trust);
- The person must know the nature and extent of his or her property;
- The person must know, without prompting, the claims, if any, of those who are, should be, or might be the natural objects of the person’s bounty; and
- The person must be cognizant of the scope and reach of the provisions of the document they are being asked to sign.

ABA Model Rule 1.14, Comment [6], recommends that lawyers look to the following six factors to assess a client’s capacity:

- the client’s ability to articulate the reasoning leading to a decision;
- the variability of the client’s state of mind;
- the consistency of a decision with known long-term commitments or values of the client;
- the substantive fairness of the decision;
- the irreversibility of the decision, and;
- the ability of the client to understand the consequences, risks and finality of a decision.
Oregon Rule of Professional Conduct 1.2(a) acknowledges the autonomy of the client, and tells us that a lawyer:

- must “abide by the client’s decisions concerning the objectives of representation,”
- must consult with the client about how those objectives are to be pursued, and
- may take action that is “impliedly authorized to carry out the representation,” but
- some decisions are the sole province of the client, including whether to settle a matter.

Aside from matters within client’s province (i.e. settlement or testifying if a criminal defendant), an attorney need not do a client’s bidding or suspend his or her professional judgment because “the strategy, tactics, and manner of the defense are for counsel to determine based upon the exercise of professional skill and judgment.” *Krummacher v. Gierloff*, 290 Or 867 (1981).

*Krummacher* dealt with a Post-Conviction Relief matter; so, its discussion of attorney-client dynamics is couched in criminal defense terms. However, these principals apply equally to any attorney-client relationship.
**Communication (Cont.)**

- RPC 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation.
- The client should be provided with enough information to participate intelligently in decisions concerning the objectives of the representation.
- ABA Model Rule 1.4, Comment [6] reminds us that fully informing a client as required under RPC 1.4(b) may not be practicable when a client suffers from diminished capacity.
- ABA Model Rule 1.4, Comment [7] states that a lawyer may delay communicating or withhold information when the client would likely react imprudently to an immediate communication, but a lawyer may not withhold information to serve the lawyer’s own or a third person’s interests or convenience.
- Therefore, communications with a mentally ill client may require more time, effort and flexibility on the part of the lawyer.
- **Practice Tip:** Do an assessment of your capabilities to communicate. Be honest with yourself about your own availability, tolerance and flexibility.

**Client Confidences – RPC 1.6(a)**

<table>
<thead>
<tr>
<th>RPC 1.6(A) REQUIRES LAWYERS TO PRESERVE CONFIDENCES</th>
<th>RPC 1.6(A),(B) ALLOW LAWYERS TO REVEAL CONFIDENCES IF</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Attorney-client privileged information AND</td>
<td>✓ Disclosure is Impliedly Authorized;</td>
</tr>
<tr>
<td>✓ Other information gained during course of representation IF</td>
<td>✓ Client consents;</td>
</tr>
<tr>
<td>✓ Client requests to keep secret;</td>
<td>✓ Required by law (including ORS 419B.010 et seq.);</td>
</tr>
<tr>
<td>✓ Embarrassing if disclosed; or</td>
<td>✓ Client intends to commit future crime; or</td>
</tr>
<tr>
<td>✓ Likely detrimental to client if disclosed.</td>
<td>✓ Necessary to prevent reasonably certain death or substantial body harm.</td>
</tr>
</tbody>
</table>
Attorney-Client Privilege Considerations

- Attorney-client privilege is a creature of statute (ORS 40.225). Its principal function is to protect communications between attorney and client from discovery or disclosure in litigation.
- Communications with representatives of a client may or may not be protected by the privilege; but in most situations, the client’s representative has no personal privilege.
- Consider carefully whether a third person really needs to be included in your conversation with the client. A third person can help ease a client’s stress and assist a client with understanding and retaining information you are conveying; however, the presence of a third person during a conversation with a client can also act to waive privilege.

Impliedly Authorized to Disclose

- Notwithstanding the prohibitions against disclosure, a lawyer may reveal confidences when the disclosure is impliedly authorized in order to carry out the representation:
- RPC 1.14(c) provides that a lawyer is impliedly authorized to reveal protected information to the extent reasonably necessary to take protective action to protect the client’s interests.
Reasons for Withdrawal

- RPC 1.16(a)(1) requires a lawyer to withdraw when the continued representation will result in a violation of the Rules of Professional Conduct.
- RPC 1.16(b)(1) states that a lawyer may withdraw when the withdrawal can be accomplished without a material adverse effect on the client.
- RPC 1.16(b)(4) allows a lawyer to withdraw, regardless of material adverse effect, if the client insists upon taking action the lawyer considers repugnant or a fundamental disagreement.

Process for Withdrawal

- RPC 1.16(c) requires a lawyer to comply with the relevant tribunal’s rules for withdrawal, which usually requires notice or a motion to withdraw filed with the tribunal.
- RPC 1.16(d) requires a lawyer to take steps, to the extent reasonably practicable, to protect the client’s interests, such as:
  - Giving reasonable notice;
  - Allowing time for employment of other counsel;
  - Surrendering papers and property to which the client is entitled, and
  - Refunding unearned fees.
Questions?

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Chapter 5

Before the Lawyers Get Paid—An Overview of Oregon Veteran Benefits—Presentation Slides

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ERIC ENSLEY
Veterans’ Services Office
Portland, Oregon
Oregon State Bar
Veterans update

FOR THE FIRST TIME IN ODVA’S
70 YEAR HISTORY
OUR STATE IS Serving VETERANS
SPANNING
4 GENERATIONS
5 MAJOR WARS
Today’s Veteran Landscape in Oregon

8% OF OREGONIANS ARE VETS

Veteran Population: 326,000   Oregon’s Population: 4,028,977

Approximately 70% of Oregon veterans do not currently access federal VA benefits.

Oregon Veterans Receiving Health Care: 99,483

Veteran Population: 326,000

- 6.5% WWII
- 8.5% Korea
- 37.2% Vietnam
- 25.9% Peacetime
- 15.3% Gulf War
- 6.6% Iraq/Afghanistan

Aging veterans
Disabled veterans
Student veterans
Women veterans
Rural veterans
Minority veterans
Tribal veterans
Justice involved veterans
Homeless veterans
Population Projections:
Oregon's veteran population is decreasing…but for the next two decades, they're aging
**ODVA Powers of Attorney**

Total POAs Currently Held by ODVA: 146,276*

*includes deceased veterans when family members are represented

POAs added in 2013: 8,139
2014: 8,718
2015: 11,050

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**A VSO is More than Just POAs**

Yes, a Veteran Service Officer has a ‘legal and moral obligation to assist the claimant’ in garnering earned federal benefits.

But when ODVA works with County VSOs, they train and encourage them to:

- **reach out** into their communities, to become a part of the fiber of the county.
- **become a resource** for all available services.
- **network** with other county offices, participate in county functions, tribal functions, justice functions, and school functions.

Veterans are everywhere, so are VSOs.
POA: So much more

SVS Support for County Offices

Certification

83 Veteran Service Officers currently under ODVA POA
73 VSOs are currently accredited

It takes 12 to 18 months for a newly hired VSO to become comfortable with CFR 38 and be knowledgeable enough to pass the accreditation exam. USDVA requires they work a minimum of 1,000 hours per year to be eligible to take the exam.
Claims Filed

- 2500 to 3000 claims and associated administrative actions transmitted monthly, on average, from all VSOs through the ODVA Portland office.
- 5500 – 6000 scheduled appointments monthly throughout the state of Oregon.

Federal VA’s Distribution of Expenditures

Federal Fiscal Year ending September 30, 2014

- Compensation and Pension: $1,282,449,000
- Medical Care: $1,093,903,000 (for 99,502 unique patients)
- Education and Vocational Rehabilitation: $142,348,000

**TOTAL VA EXPENDITURE IN OREGON:**
$2,542,834,000
Federal VA’s Distribution of Expenditures

# of Oregon Veterans Receiving:
- Disability Compensation – 63,000
- Pension – 5,524
- DIC – 5,163
- Death Pension Beneficiaries – 2,063

Health Care
# of Oregon Veterans:
- Enrolled in VA Healthcare – 140,490
- Unique Patients Treated – 99,483

Those federal dollars begin as claims....
Focus on the Critical Pre-Determination Phase

- Veterans Claims Assistance Act of 2000
- 38 USC 5103
- Due Process
- VA's Duty to Assist
- Claims Development
- Order C&P Exam and Collect Results
Fully Developed Claim (FDC): What is it?

- An FDC is a claim that needs very little to no development.
- Development is limited to:
  - Federal records
  - Compensation and Pension exams (C&P)
- Can be rated in 90 days or less to include the time for the C&P exam.
Who can use an FDC?

- These claims are for live claims only!
  - No widow, dependent, or burial claims, as well as no character of discharge determination issues.

- Can be used for service connected or non-service connected pension claims, but NOT dual claims.

- Can be initial, re-opened, increase, or secondary issue claims.

- Can also be an IU claim; HOWEVER, you must include the 21-8940 and any 21-4192s that would be needed.

Fully Developed Claim Rules

- Must be on either a 21-526EZ or 21-527 EZ form.
  - Even reopened claims
  - If not they will be kicked out and treated as a regular claim

- All information must be submitted at the time of submission.
  - If anything comes in after the initial submission, it automatically takes the FDC claim out of FDC status and it will be processed as a regular claim.

- If you need more room to list disabilities write “see attached” in the disability section and attach a new page.
Fully Developed Claim Rules, continued

• All non-VAMC medical records must be supplied.
  • If you submit a medical release form, it is not FDC.

• If you want to add dependents at the time of submission you must submit a 21-686c.

Fully Developed Claim Rules, continued

• Reminder: cannot be used for widow, dependent, or burial claims, as well as no character of discharge determination issues.

• Cannot have a pending appeal at the time of filing.

• Cannot add issues while this is pending, or the claim will be pulled from FDC status and worked as a regular claim.

• If they are Guard or Reservists, they must provide their STRs, or the claim is not FDC and will be worked as a regular claim.
Future Trends
Digital Claims – “D2D”

Across the country, a large percentage of claims are submitted and managed by VSOs, State, and County Veteran Departments.

Many of these VA business partners have claims management systems built by third-party vendors that perform the following:

- Capture, process, store, and manage VA and Non VA forms
- Track and manage the large volume of veterans claims

D2D is a generalized data delivery service (like FedEx®) that will enable ANY VA accredited partner to submit digital data captured in ANY VA Form together with associated attachments directly from an authorized partner system to a VA system.
Digital Claims – “D2D”

Electronic submission speeds the process and reduces errors. ODVA was an early participant in the experimental stage, and electronic submission is now becoming the norm for submission across the country.

Currently, everything not submitted via D2D must be sent to Janesville, Wisconsin, for scanning and upload into the Veterans Benefits Management System (VBMS).

![Image of bags of mail]

Digital Claims – “D2D”

- Direct machine-to-machine interaction for VSOs to submit claims directly into the Veterans Benefits Management System (VBMS)
- Eliminates the need to print and mail hard copies to VA to submit claims
- Allows partners to leverage their investments in claims management systems
Digital Claims – “D2D”

D2D and The National Queue

Claims submitted electronically should remain with the geographic Regional Office covering the veteran’s home. For ODVA-represented clients, that would be Portland.

If the geographic Regional Office (RO) develops too much a queue, a claim may be re-routed to an RO not experiencing that level of backlog. Currently, the Portland Regional Office is handling claims from other areas of the country as well as Oregon, because they are staying on top of the level of local submissions.
D2D Limitations

While it is functional, the D2D System of claim submission is still relatively new. Not all forms are being accepted at this time. The VA has begun with common, frequently submitted forms to work out the process.

Currently, these forms are being accepted digitally by the VA:
- VA 21-526 EZ – Application for Disability Compensation and Related Compensation Benefits
- VA 21-22 – Appointment of Veterans Service Organization as Claimant’s Representative
- VA 21-0966 – Intent to File a Claim

Supporting documentation or evidence associated with the above listed forms may be submitted electronically (either .pdf or .doc) as well.

Digital Claims – “D2D”
Limited Production Submission Totals as of 2/1/2016

<table>
<thead>
<tr>
<th>Month</th>
<th>526EZ</th>
<th>21-22</th>
<th>0966</th>
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<td>Grand Total</td>
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<td>672</td>
</tr>
</tbody>
</table>
Chapter 6A

Filing a VA Disability Claim—Presentation Slides

ALISHA FIRESTONE
A. Firestone Law PC
Director, Veterans Legal Clinic, Willamette University College of Law
Salem, Oregon
Filing a VA Disability Claim

BY: ALISHA FIRESTONE, ATTORNEY, A. FIRESTONE LAW, P.C.

Contact Information

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Accreditation

- By law, an individual must be accredited by VA as an agent, attorney, or representative of a VA-recognized veterans service organization to assist in the preparation, presentation, and prosecution of a claim for VA benefits. 38 U.S.C. §§ 5901-5902, 5904; 38 C.F.R. § 14.629.

- File VA Form 21a with certificates of good standing from all state bars, courts, Federal and State agencies to which you are admitted.

- Submit VA Form 21a and attachments to Office of General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. Or Fax: 202-273-0197.

A person who served in the active military, naval or air services, and who was discharged or released under conditions other than dishonorable.


The VA has its own statutory definition of a veteran.
### Initial Intake Documents

**VA Form 21-22a**  
Appointment of Individual as Claimant’s Representative  
- File with the Regional Office and BVA

**VA Form 21-0845**  
Authorization to Disclose Personal Information to a Third Party  
- File with the Regional Office

**VA Form 10-5345**  
Request for and Authorization to Release Medical Records for Health Information  
- File with the Regional Office

### Fee Agreement

- An attorney may not charge claimants a fee for assistance with preparing a claim.
- File with the Office of General Counsel. [FeeAgreements.ogc@va.gov](mailto:FeeAgreements.ogc@va.gov)
- Must be filed within 30 days of signing.
Initial Claim

- 3 Circumstances:
  - Pre-Discharge Claim:
    - Form 21-526c
  - Standard Claim:
    - Form 21-526EZ
  - Fully Developed Claim:
    - Also Form 21-526EZ
    - Fastest way to Process Claim
    - Certify claim as complete

Standard Claim continued

- The VA has a “duty to assist” veterans in developing claims.
  - Upon receiving a claim, the VA should obtain in-service medical records, VA medical records, and any other relevant government documents that the veteran authorizes the VA to obtain.
  - The VA may send the veteran for a Compensation and Pension (C&P) exam.
How To Apply

- eBenefits
- Regional Office

Effective Date

Date of receipt of claim or date entitlement arose, whichever is later. 35 U.S.C. 5110(a).

- Date Entitlement Arose: date condition was shown to exist by medical evidence.
- Date of Receipt of Claim: Consider an informal claim...
  - Way to preserve effective date while gathering evidence.
  - 1 Year to finalize claim.
    - Call National Call Center at 1-800-827-1000 or the National Pension Call Center at 1-877-294-6380
    - Start an Application on eBenefits.
    - File VA Form 21-0966 with Regional Office
      - Identify general benefit sought,
      - Identify claimant, and
      - Signed by claimant or authorized rep.
How To Obtain Service-Connection

Pre-Service Disabilities
Test:
1. Injury or disease that occurred prior to service and made permanently worse during service;
2. Diagnosis; and
3. A nexus between the disability and injury or disease.

In-Service Disabilities
Test:
1. Injury or disease that occurred in service;
2. Diagnosis; and
3. A nexus between current disability and injury or disease.

Secondary Service Connection
Test:
1. Current physical or mental disability in addition to your service-connected disability; and
2. Your service-connected disability either caused or aggravated your additional disability.

Elements of Claim

See 38 C.F.R. Book C, Schedule for Rating Disabilities
- Disabilities are categorized based on the part of the body impacted.
- Each disability is given a diagnostic code, which specifies the required symptoms (elements).
- If one disability satisfies more than one diagnostic code, the VA is supposed to select the code providing the highest rating.
Evidence

- DD214
- MEDICAL RECORDS
- DBQ
- BUDDY STATEMENTS

Burden of Proof

- Burden of Proof: “as likely as not” that the veteran’s disability is due to military service.
- If the evidence is 50-50, veteran wins.
Calculating Disability Rating

- 10 + 10 = 19
- VA uses a combined ratings table to calculate the degree of disability for multiple disabilities.
- How to calculate:
  - Arrange disabilities in order of severity, beginning with most severe.
  - All veterans start with 100% available to be rated.
  - Starting with the first disability, reduce the 100% by the degree of disability.
  - With all remaining disabilities, reduce what is left of the 100% by the degrees of disability, one at a time.
  - Round to the nearest 10%.

Example Calculation

- A Veteran has one 40% disability, a 30% disability, and a 10% disability.
- Starting with the most severe disability and working our way down, we see that:
  - 40% of 100% = 40% disabled, with 60% left to be rated.
  - 30% of 60% = 18% disabled + 40% = 58% disabled, with 42% left to be rated.
  - 10% of 42% = (4.2% + 58%) = 62.2% disabled.
- Rounding to the nearest 10%, the veteran is 60% disabled.
Bi-Lateral Factor

- When a veteran is injured on both arms, both legs, or paired skeletal muscles, the ratings of the disabilities of both sides will be combined as usual, and 10% of this value will be added.
- The bilateral factor will be treated as one disability when arranging in order of severity.
- Example: a Veteran has disabilities evaluated at 50%, 50%, 10% and 10% (the two 10’s representing bilateral disabilities). The order of severity would be 50, 50, 21.

Subsequent Claims

Types:
- New disability
- Increased rating
- TDIU
- Survivors Claims
- Changing dependents: VA Form 21-686c
- Special Monthly Compensation

How to File:
- Supplemental claim form (VA Form 21-526b)
- Statement in Support of Claim (VA Form 21-4138) – catchall
Total Disability Based on Individual Unemployability (TDIU)

- VA Form 21-8940
- Treated as a claim for an increase.
- A way to obtain a 100% rating when a Veteran is unable to maintain substantial gainful activity as a result of a service-connected disability.

Test:
- (1) one service-connected disability rated at 60% or
- (2) a combined disability rating of 70% with at least one disability rated at 40% or higher.

Survivors' Claims

<table>
<thead>
<tr>
<th>Dependency &amp; Indemnity Compensation</th>
<th>Accrued Benefits</th>
<th>Substitution of Claimant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits to survivors of veterans whose deaths were either:</td>
<td>Benefits that are owed to a veteran but not paid prior to veteran’s death.</td>
<td>Type of accrued benefit.</td>
</tr>
<tr>
<td>1) service connected; or</td>
<td>• VA Form 21-601; or</td>
<td>- Must be eligible to receive accrued benefits.</td>
</tr>
<tr>
<td>2) The veteran had a 100% service-connected disability for 10 years prior to his death and died from a non-service connected disability.</td>
<td>• VA Form 21-534</td>
<td>- Substitute processes claim or appeal to completion.</td>
</tr>
<tr>
<td>• VA Form 21-534</td>
<td></td>
<td>- Substitute claimant can submit additional evidence to support claim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• VA Form 21-0847</td>
</tr>
</tbody>
</table>
Special Monthly Compensation

- Tax-Free Benefit
- Added compensation paid in addition to disability compensation.
- Paid to Veterans who lost entirely, or lost use of certain extremities or organs.
- Also paid in instances where a Veteran is so helpless as to need the aid and attendance of another person.
Chapter 6B

Appeal of Adverse Department of Veterans Affairs Decisions—Presentation Slides

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Northwest Veterans Law
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Appeal of Adverse Department of Veterans Affairs Decisions

Mark Ronning
Northwest Veterans Law
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Order of March

• Veteran Identification
• Department of Veteran Affairs Structure
• Attorneys as Accredited Representatives
• Attorney Compensation
• VA Pension v. Disability Claims
• Evaluating Service Connected Disability Claims
• Representing Veterans at the VA Regional Office
• Appeals to the Board of Veteran Appeals, and beyond
Veterans - Defined by Congress

- 38 United States Code §101(2)
  - A Veteran is “a person who served in the active military, naval or air services and who was discharged or released under conditions other than dishonorable.”

- Types of Service Characterization on Discharge
  - Honorable
  - General, Under Honorable Conditions
  - Under Other Than Honorable Conditions / aka Undesirable
  - Bad Conduct
  - Dishonorable

Veterans – Defined for Compensation Purposes

- VA Disability Compensation Benefits are available
  - “If the former service member did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable.” 38 CFR §3.12(a)

- 38 CFR §§3.12(a) – (k) identifies circumstances under which the VA will deny benefits to former Servicemembers who were discharged or released with service characterized as Bad Conduct, Under Other than Honorable or General, Under Honorable conditions.
U.S. Department of Veteran Affairs (DVA)

- Veterans Benefits Administration
  - Determines Eligibility for Health Care Benefits
    - Including Disability Compensation Eligibility
  - Determines Eligibility and Administers
    - Educational Assistance
    - Home Loan Guarantees
    - Vocational Rehabilitation
    - Pension / Survivor / Dependent Benefits

- Veterans Health Administration
  - Administers Health Care
  - Administers Veteran Memorial Cemeteries

Decision Levels – Disability Claims

- VA Regional Offices (VARO)
  - Claims Officer
  - Decision Review Officer

- Board of Veteran Appeals (BVA)
  - National board within DVA which reviews regional agency decisions

- U.S. Court of Appeals for Veterans Claims (CAVC)
  - Article I court which reviews final BVA decisions

- U.S. Court of Appeals for the Federal Circuit
  - Exclusive jurisdiction to review DVA challenges
Attorneys as Advocates in DVA System

• Civil War
  • 1862 Congressional authorization for agent representation
  • 1864 Congress doubled maximum fees for anyone assisting persons applying for a pension, reenlistment bounty or other military allowance – to $10

• VJRA (Veterans Judicial Review Act of 1988)
  • Congress authorized attorneys and agents to charge a “reasonable fee” for certain appeals which were newly authorized beyond the DVA level

  • Congress authorized “recognized agents and attorneys” to charge a “reasonable” fee for representation before the VARO or BVA after a Notice of Disagreement is filed
“Recognized Agents and Attorneys”

- **Recognized Agents and Attorneys**: The United States Office of Government Counsel is responsible for vetting and accrediting attorneys and agents

- **Reasonable Fees**: “Recognized agents and attorneys” may charge a “reasonable fee” when recognized as the veteran’s “authorized representative”

- **Authorized Representative**: DVA identifies **only one** “authorized representative” (or “POA”) to speak on the veteran’s behalf

---

**Becoming an Accredited Attorney**

  - (1) The Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary.
  - (2) The Secretary shall prescribe such qualifications and standards of conduct for individuals recognized under this section, including a requirement that, as a condition of being so recognized, an individual must show that such individual is of good moral character and in good repute, is qualified to render claimants valuable service, and is otherwise competent to assist claimants in presenting claims;

- **Application to Office of Government Counsel**
  - VA Form 21a – Information regarding standing, character and ability
Remaining an Accredited Attorney

- Step Two – Train
  - Three hours of qualifying CLE training within one year of accreditation
  - Home state must recognize the training and provide CLE credits

- CLE required topics:
  - Representation before VA
  - Claims procedures, basic eligibility for VA benefits
  - Right to appeal
  - Disability compensation
  - Dependency and indemnity
  - Compensation
  - Pension

Accredited To Do What?

- Represent veteran (or successor) in appeal of an adverse agency decision
  - Before the VA Regional (VARO)
  - Before the VA Board of Veteran Appeals

- Act as Authorized Representative (POA) for compensation in appeal of adverse decisions once Notice of Disagreement is filed (after June 19, 2007)

- Represent veteran (or successor) during initial claim without compensation
Attorney Compensation

- Form of Agreement: All agreements for payment of fees before the VARO or BVA shall be in writing and signed by attorney and claimant

- VARO / BVA fees may be:
  - Fixed
  - Hourly
  - Contingent
  - Combination

- Contingent Fees (Awarded as percent of past due benefits):
  - 20% or less presumed reasonable
  - 33 1/3 or more presumed unreasonable

Attorney Compensation

- Contingent Fee Agreement of 20% or less
  - VA will pay contingent fee directly to the representative from past due benefits

- Contingent Fee Agreement of greater than 20% scrutinized
  - Complexity of the case
  - Extent and type of services performed
  - Level of skill and competence required of representative
  - Results achieved by representative
  - Level of appeal, Rates of other representatives, etc.

- Filing Fee Agreement
  - All fee agreements must be filed with OGC w/in 30 days of execution
NSC Pension v. SC Disability Claims

- DVA administers two major disability benefit programs

- Non Service Connected (NSC) Pension requires:
  - Wartime service
  - Limited income (needs-based)
  - Total and permanent disability (presumptive for 65 and older)

- Service Connected (SC) Disability Compensation requires:
  - Current disability
  - In-service disease, injury or event
  - Nexus between current disability and in-service disease, injury or event

Non Service Connected Pension Claims

- NSC Pension for veterans
  - Designed to supplement income of disabled veterans
  - NSC Pension denial is appealable with compensation to accredited attorney
  - 304,579 NSC Pension recipients in FY 2014

- Pensions for eligible surviving relatives
  - Dependency and Indemnity Compensation (DIC)
  - Compensation to surviving spouse, surviving child or surviving parent if the veteran’s death was service connected
  - 382,000 surviving dependents receiving DIC benefits in FY 2014
Service Connected Disability Claims

- SC Disability Compensation is focus of presentation
  - Over 3,900,000 veterans received disability compensation benefits in FY 2014

- Service Connected (SC) Disability Compensation
  - Current disability
    - Evidence must document a current disability
    - Compensation not available for injury or illness without lasting symptoms
  - In-service disease, injury or event
    - Medical or lay evidence of in-service occurrence or aggravation of disease or injury
    - Result of military duties not required; Instead, arose during a period of military service
  - Nexus between current disability and in-service disease, injury or event
    - 38 CFR §§ 3.303 and 3.313 explain five ways to establish service connection

Evaluating SC Disability Appeals

- First contact made by veteran or claimant
  - All convinced that DVA erred on their claim
  - Most represented by a Veteran Service Officer (VSO) on underlying claim
  - Most want to explain the full story over the phone to staff

- Must extract key information
  - When was the underlying claim filed?
  - What disability was claimed?
  - When was the adverse decision rendered?
  - Was a Notice of Disagreement already filed?
  - Are other claims pending before the DVA?
  - What documents support the claim?
Evaluating SC Disability Appeals

• Obtain the VA Claims File (C-File)
  • C-File refers to all documents maintained by the DVA concerning claims filed by the veteran, including paper, electronic, treatment and claims records
  • Always request C-File from VARO (may request in person or through mail)
    • Allow 30-120 days for VA to produce C-File
    • Freedom of Information Act requests require VA response within 20 business days
  • If veteran was represented by VSO, request records from VSO
    • Records of DVA may not contain all records submitted by the VSO

• Obtain Military Records
  • Service connection is required; VA may not have complete records although it has a duty to assist veteran and obtain service records
  • Standard Form (SF) 180, Request Pertaining to Military Records

Evaluating SC Disability Appeals

• View VA paper file at VA Regional Office
  • May not mark or alter – Must review at VA
  • Claimant may request that VA copy all documents for claimant to take home

• Review paper or compact disc C-File sent by VA
  • Copies of VA paper files may be 200-1800+ pages in length
  • Both paper and disc versions may be out of order, missing pages, blurry, partially copied and arrive without numbering or organizational reason

• Must develop organizational system that makes sense for cross-referencing and retrieving documents / information
  • Color coding for categories? Tabs? Electronic notations?
Evaluating SC Disability Appeals

• Initial File Review
  • Evaluate case posture and deadlines
  • Identify all claims raised by the claimant, identify potential claims raised by the VA, identify any issues with the identified claims
  • Chronicle the timelines, facts, incidents, providers, etc

• The advocate should:
  • Analyze the most recent VA decision(s)
  • Examine the veteran’s DD 214
  • Establish and chronicle the veteran’s claim for benefits
  • Review prior rating decisions

Evaluating SC Disability Appeals

• Second File Review
  • Evaluate the quality, or existence, of evidence in support of the claim(s)
  • Review military, private and VA medical records
  • Review military records for duty positions, locations, awards, timelines
  • Identify possible claims not raised by the claimant or the VA
  • Identify missing evidence and methods of acquiring it

• Practice Tip
  • Do not rely on the VA conclusions of fact or law
  • Medical records, military records, lay statements and legal applications are often misinterpreted or mischaracterized
  • Identify VA conclusions and characterizations then validate or refute
Evaluating SC Disability Appeals

- Common Decision Errors at Regional Office Level
  - SC Disability was denied –
    - Because VA did not consider the disability which the veteran claimed
    - Because VA did not consider key evidence which was submitted
    - Because VA applied the wrong legal standard to the disability
    - Because the VA examining doctor applied the wrong diagnostic standard
  - SC Disability allowed –
    - But VA established the wrong effective date
    - But VA awarded a disability rating which did not reflect the legal standard of disability
    - But VA incorrectly calculated the combined disability rating where several disabilities were awarded

Representing Veterans - Contracting

- Getting Paid for Representation
- Contingent Fee Agreements
  - Presumed reasonable at 20%
  - In writing
  - Identify the names of the veteran and claimant (if different)
  - Identify the VA file number
  - Identify specific terms for determining fees and whether VA is to pay attorney directly out of past due benefits

- Send copy of fee agreement to OGC and VARO Fee Coordinator
  - VARO Fee Coordinator evaluates, files with claim and decides whether payment may be made to representative out of past due benefits
Representing Veterans – Notifying DVA

- Letter notification to VARO with enclosed documents and forms
  - Send to the Evidence Intake Center (Wisconsin)
  - Recommend certified mail, return receipt requested
  - Allow 7 days for receipt

- Accompanying Documents:
  - Fee Agreement
  - VA Form 21-22a (Appointment of Representative)
  - Correspondence from client replacing former POA
  - VA Form 21-0845 (Authorization to Disclose Personal Info to Third Party)
  - VA Form 10-5345 (Authorization to Release Medical Information)
  - VA Form 21-0958 (Notice of Disagreement) – File now or later?

Representing Veterans – Developing the Case

- BLUF: The accredited representative must understand the case before filing the NOD

- From the C-File, military and medical records:
  - Are all possible claims addressed?
  - What evidence was submitted and available?
  - Can the original evidence and argument be improved?
  - What errors did the agency make?

- From DVA Decision Letters or Statements of the Case:
  - Identify evidence considered, legal standards behind decisions as to service connection and disability ratings, the agency theory of the case
Representing Veterans – The NOD

- The Notice of Disagreement (NOD – VA Form 21-0958)
  - Standardized form notifying DVA of disagreement with agency decision
  - In essence, the “complaint” used to bring the claimant’s case
  - DVA must receive the NOD within 12 months of the date DVA mailed the adverse agency decision
  - Identifies the claimant by name, SSN and claim number for DVA
  - Identifies which part of the decision is in dispute, i.e., left foot or PTSD
  - Specifies how the claimant believes the decision erred
  - NOD must specify a traditional or Decision Review Officer process

- Complexity and detail of argument is up to practitioner
  - No standard practice yet as the first NOD form was adopted in 2015

Representing Veterans – Filing the NOD

- Perfect world has the NOD filed within 60 days of the fee agreement

- Complete information for a final NOD takes time
  - Acknowledgment of representation may take four months
  - DVA response to request for C-File may take up to six months
  - Attorney evaluation of hundreds to thousands of pages of VA, military and medical records takes time
  - Drafting a comprehensive argument with relevant evidence takes time

- Recognizing a 12 month limitation period, weigh filing to begin the process with evidence and arguments to follow vice submission of the client’s fully developed and well-thought position in one document
Representing Veterans – Presenting to VARO

• Traditional Appeal
  • DeNovo Review / Reconsideration of the paper file
  • Will consider new evidence submitted and not previously considered
  • If dissatisfied with the DeNovo Review, may request DRO before certification to the Veterans Board of Appeals (VBA)

• Decision Review Officer (DRO)
  • May receive a personal hearing with the DRO
  • A record is made for appeal to the BVA
  • Claimant and witnesses may testify
  • Representative makes case as in other administrative hearings

Appeal from VARO to BVA

• DRO issues the agency decision and claimant has 60 days to appeal to the Board of Veterans Appeals by filing a VA Form 9

• The BVA is a separate component within the DVA
  • Chairman appointed by POTUS, 62 Veteran Law Judges (2013), plus staff
  • The BVA decided 41,910 appeals in FY 2013
  • BVA decisions are appealable to the Court of Appeals for Veterans Claims

• VA Form 9 identifies claimant’s next appeal format
  • Hearing before DRO at VARO
  • BVA Options: (1) appeal without hearing, (2) hearing in Washington, D.C., (3) local hearing before a traveling board, or (4) hearing by teleconference
Appeal from VARO to BVA

- Veteran has 60 days to file a VA Form 9, at which time the BVA priority date is established

- VARO must certify the appeal to BVA
  - Certification from VARO to BVA takes, on average, 725 days (FY 2013)
  - The VARO must consider new evidence and continue to work the case until certification
  - If claimant submits new evidence in support, VARO will issue a new rating or issue a Supplemental Statement of the Case
  - VARO notifies claimant of transfer to BVA on certification
  - Claimant has 90 days to change representatives, request a hearing or submit additional evidence from mailing of the certification notification

Actions at the BVA

- The BVA assigns a docket number once it physically receives the case from the VARO

- The docket number is based on the previously established priority date, the date which the VA Form 9 was received at the VARO

- BVA decision time from certification averaged 235 days in FY 2013

- BVA may issue an outright decision or remand to the VARO

- Average time on VARO remand was 348 days in FY 2013
 Appeals above BVA

- Claimants may appeal adverse BVA decisions to the U.S. Court of Appeals for Veterans Claims (CAVC)
  - CAVC established by the Veterans’ Judicial Review Act (VJRA) of 1988
  - An Article I court
  - Attorneys authorized to charge “reasonable fees” to represent claimants
  - Jurisdiction essentially limited to review of final BVA decisions

- CAVC decisions are appealable to the U.S. Court of Appeals for Federal Circuit
  - VJRA provides the Federal Circuit with exclusive jurisdiction to review direct challenges to VA regulations, rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability, including opinions and interpretations of the VA general counsel

Foot Stomps in Conclusion

- The area of law is not difficult, but very dynamic with rule and form changes on a monthly basis

- Specialized area of law – Surround yourself with resources:
  - Join National Organization of Veterans Advocates (NOVA)
  - Join OSB Military and Veterans Law Section
  - Purchase Veterans Benefits Manual, published by LexisNexis

- The timelines are glacial but the patience of clients is not

- Take the time to familiarize with the required forms, timelines, processes and caselaw for competent representation of your client
Questions

Contact

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Chapter 7

The Intersection of Civil Law and Oregon Veterans

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Executive Director, Oregon Veterans Legal Services
Mt. Angel, Oregon

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Chapter 7—The Intersection of Civil Law and Oregon Veterans

The Intersection of Civil Law and Oregon Veterans

Daniel Zene Crowe
Lead Attorney, Veterans’ Justice Project, Metropolitan Public Defenders, Portland
Executive Director, OR Veterans Legal Services
May 19, 2016

Agenda

• An overview of “Veteran” and “Service Member” in Oregon Law
• Practice areas and issue spotting
• The architecture of veterans’ support under Oregon law: Building House Joint Resolution 202 and the future of veteran support

The Intersection of Civil Law and Oregon Veterans
Who Are We Working For?

- 322,355 Veterans in Oregon
- 58,000 Veterans in America are homeless = number of service members who died in Vietnam
- Veterans are twice as likely as other Americans to become chronically homeless
- Veterans represent about 8% of the Oregon population, but account for 27% of all suicides
- The risk of women Veterans becoming homeless is four times greater than for male Veterans

An overview of “Veteran” and “Service Member” in Oregon Law

- 308 mentions of “Veteran” or “Veterans” in the civil portions of the Oregon Revised Statutes
- Oregon Legislature has expressed significant guidance concerning legal status as Veteran or Active Duty Military Member
- Companion Materials are offered to provide a simplified reference for Oregon practitioners regarding their areas of the law
- Often makes exceptions for unique demands of military service
Some Examples

- ORS 408.440. Land of enlisted person exempt from foreclosure and judicial sale during war.
- ORS 18.345(2) “a court may not set aside, alter or modify any portion of a judgment of annulment, separation or dissolution of marriage that provides for the custody, parenting time, visitation, support and welfare of a minor child of a deployed parent until 90 days after the completion of the deployed parent’s deployment”
- Many professions given clinical board examinations by the Armed Forces shall be certified in Oregon. ORS 671, et seq.
- Active Members of the Armed Forces who are stationed in Oregon, and their spouses and children, shall be considered Oregon Residents for admission to Community College. ORS 341.496.

Practice Areas and Issue Spotting

- Intended to help you spot issues and make referrals, not be an expert in Veterans’ Law
- Those who have served our Nation are accorded a special place under the law
- Let us continue to serve them…
Oregon’s Veterans: Building a Support Infrastructure

- Military and Veterans Law Section
- Supportive Services for Veterans Families Program and Veterans’ Justice Project
- Innocent Warrior Project and Oregon Veterans Legal Services (Universal Legal Screening)
- Oregon Veterans Legal Clinic
- House Joint Resolution 202

House Joint Resolution 202

Be It Resolved by the Legislative Assembly of the State of Oregon:

PARAGRAPH 1. The Constitution of the State of Oregon is amended by creating a new section 4f to be added to and made part of Article XV, such section to read:

SECTION 4f. (1) Effective July 1, 2017, 1.5 percent of the net proceeds from the State Lottery shall be deposited, from the fund created by the Legislative Assembly under paragraph (d) of subsection (4) of section 4 of this Article, in a veterans’ services fund created by the Legislative Assembly. The Legislative Assembly may appropriate other moneys or revenue to the veterans’ services fund.

(2) The moneys in the veterans’ services fund may be used only to provide services for the benefit of veterans. Such services may include, without limitation:

(a) Assistance for veterans with reintegration, employment, education benefits and tuition, housing, physical and mental health care and addiction treatment programs;

(b) Assistance for veterans, spouses of veterans or dependents of veterans in accessing state and federal benefits; and

(c) Funding services provided by county veterans’ service officers, campus veterans’ service officers or nonprofit or tribal veterans’ service officers.

(3) As used in this section, “veteran” means a resident of the State of Oregon who served in the Armed Forces of the United States.

PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.
Questions?

THANK YOU
Legal Basis of the Supportive Services for Veteran Families (SSVF) Program

- Permissible Legal Services, 38 U.S.C. §2044(b)(1)(D)(vii)
  - [Supportive Services, including] legal services to assist the veteran family with issues that interfere with the family’s ability to obtain or retain housing or supportive services.
- CFR 62.34(f): “Other services … as approved by VA that are consistent with the Supportive Services for Veteran Families Program.”
Why OVLS?

• Oregon Veterans Legal Services is a nonprofit organization with a mission to implement the Oregon Veterans Legal Plan:
  – to help Oregon's Veterans and their Families who struggle with homelessness;
  – to train and inspire lawyers and law students to better care for our Veterans;
  – to encourage and assist the use of Veterans Courts to administer justice in appropriate cases for our Veterans here in Oregon;
  – to advocate for better quality representation for our currently-serving sons and daughters during military justice proceedings throughout the military; and
  – to advance the interests of all Service Members in obtaining justice.

Why a Clinic at Willamette University College of Law?

• Law School Clinics provide cost-effective pro bono legal support to underserved populations, provide unparalleled experiential training to law students, and enhance the reputation of host Law Schools

• Willamette’s Leadership in opening Legal Education in Oregon to Veterans makes Willamette an ideal host for the OVLC
Mission: Oregon Veterans Legal Clinic

The Oregon Veterans Legal Clinic at Willamette University College of Law provides legal screening and advocacy to unrepresented, low-income Veterans (including currently-serving Service members) and their Family Members throughout Oregon in order to reduce or overcome civil legal barriers to stable and permanent housing while also providing law students hands-on experience representing real clients and an opportunity to learn about, interact with, and give back to Oregon’s military community.

The Oregon Veterans Legal Clinic also serves as a Center of Excellence to coordinate and rally Oregon’s Legal Community around the principles of Legal Service to Veterans.

The Servicemembers Civil Relief Act (SCRA)

SCRA Materials Provided Courtesy of MAJ Scott Randall, US Army JAG School
Chapter 7—The Intersection of Civil Law and Oregon Veterans

SCRA Briefing Outline

• Background
• Who receives the protections?
• When do the protections begin and end?
• Protections and Benefits
  ➢ Procedural Protections
  ➢ Financial Protections
  ➢ Leases, Evictions, Installment Contracts, & Mortgages
  ➢ Residence for Tax Purposes and Voting Rights

SCRA Background Information

• 1918: Soldier’s & Sailor’s Civil Relief Act (SSCRA) Enacted
• 1940-2003: Amended SSCRA
• 2003: Servicemembers Civil Relief Act (SCRA)
In general, the SCRA provides various legal and financial protections to qualified Servicemembers during their military service.

The SCRA enables Servicemembers to devote their entire energies to the Nation’s defense.

**Basic SCRA Protections**

- Stay of Proceedings
- Default Judgments
- Suspension of Statutes of Limitations
- 6% interest cap
- Lease terminations
- Cell Phone contract termination
- Eviction Protection, Mortgage Foreclosure Protection, Installment Contracts Repossession Protection
- Taxation provisions
- Voting rights
Who Receives the Protections?

- **Reserve** - When on Active Duty
- **National Guard** - Federal Service (Title 10) & Sometimes Title 32 (32 USC § 502f)
- **Active Army** - Sometimes
- **Family Members** - Sometimes

National Guard SCRA Applicability

- Examples:
  - Overseas deployments in Title 10 active duty status
  - Title 32 (30 days or more + Nat. Emergency)
    - Airport Security after 9/11
    - Hurricane Katrina
When Do Protections Begin?

- Entry on Active Duty
- Reserve Components - Receipt of active duty orders

When Do Protections End?

- Normally, on date of release from Active Duty
- Exceptions:
  - Stay of civil proceeding: File application within 90 days after release from Active Duty (REFRAD)
  - Default Judgments: File application to set aside the judgment no later than 90 days after REFRAD
  - 6% max interest rate: For mortgages only, reduction continues one year after REFRAD
  - Court order required for foreclose (pre-service mortgage) & opportunity to request a foreclosure stay: Right continues 1 year after REFRAD (returns to 9 months on 1 Jan 16)
Enforcing SCRA Rights

- Private right of action – may personally bring civil action for damages, equitable or declaratory relief
- Court may award attorneys fees to person harmed by SCRA violation

Enforcing SCRA Rights

- The US Attorney General may sue a person engaging in a pattern or practice of violating the SCRA
- The US Attorney General also may sue a person who violates the act in a manner that raises an issue of significant public importance
Procedural Protections

Stay of Proceedings
Servicemember with Notice

- Who?
  - Servicemembers with notice of proceedings
- What Proceedings?
  - Civil Court & Administrative Hearings? Yes.
    - Including child custody proceedings
  - Criminal Proceedings? No!
- When?
  - Servicemember is unavailable and material effect (on ability to appear)
“Material Effect” Provisions

- “Material Effect” is a recurring concept throughout much of the SCRA

- The person’s military service must materially affect the person’s ability to meet the obligation
  
  - Stated otherwise, the person’s military service must prejudice the person’s ability to meet the obligation

- Material Effect is a CENTRAL issue to the SCRA stay provision analysis

---

Stay Requests

- Extremely important to follow the steps required for a stay request!

- Stay request must be by letter or other communication and include:
  
  1. Facts establishing there is a material effect on ability to appear
  2. Date when Servicemember can appear
  3. Letter (or other communication) from commander stating no leave authorized
Default Judgments

• Applies only if the Servicemember has not appeared

• Basic Rule: Before a judgment is entered against any person not appearing, the plaintiff must submit an affidavit stating:
  ➢ Whether or not defendant is in military; or
  ➢ That plaintiff cannot determine whether defendant is in military

Reopening Default Judgments

• Upon application by Servicemember, the court SHALL:
  ➢ Reopen any default judgment entered while the Servicemember was on active duty or w/in 60 days of REFRAD
  ➢ This provision applies to child custody proceedings.

• Servicemember’s application must:
  ➢ Be made while applicant is still on active military duty or within 90 days thereafter
  ➢ Show material effect on ability to provide a defense
  ➢ Assert a meritorious defense to all or part of the action
Statutes of Limitation

- SCRA tolls (stops) the running of civil statutes of limitations
- Civil and administrative proceedings
- Applies whether the Servicemember is plaintiff or defendant
- Except for internal revenue laws!
- Does not apply to Criminal proceedings

Financial Protections
6% Interest Cap

• Basic Rule:
  ➢ Limits interest to 6% on **pre-service** obligations (includes student loans)
  ➢ Pre-service means pre-active duty
  ➢ Lender **must** forgive interest above 6%
  ➢ Lender **cannot** accelerate payment of principal

6% Interest Cap Requirements

• Servicemember must write a letter to creditor
• Must provide a copy of orders and any extensions
• Must give notice only
  ➢ NO initial requirement for Servicemember to show “material effect”
  ➢ Creditor must reduce rate after SM’s notice
• Creditor may avoid reducing the interest rate only through COURT FINDING of no “material effect”
6% Rule for Mortgages

- Expansion of the 6% interest cap time period for mortgages:
  - Interest rate on mortgages may be reduced to 6% during AD and for ONE YEAR after AD

6% Examples

- Active Army Soldier financed his education with student loans at 9% prior to entering active duty

- National Guard SFC Jones took out $50,000 in business loans at 8% in 2008; mobilizes to active duty at Ft. Riley in 2010

- Army Reserve Soldier purchased home at 7.5% in 2001; was mobilized for active duty to Afghanistan in 2009
Non-Discrimination Protection

- Basic Rule: Claiming rights under SCRA cannot serve as basis for –
  - Adverse credit report
  - Denial/revocation of credit
  - Denial of insurance coverage
  - Change in terms of existing credit/insurance
  - Annotation identifying SM as member of Guard or Reserve

Leases, Evictions, Installment Contracts & Mortgages
Residential Lease Terminations

• Servicemember may terminate **residential** leases as follows:
  - All pre-service leases (leases executed prior to active duty service)
  - Leases executed while on active duty IF:
    • Soldier receives PCS orders; or
    • Soldier will deploy for more than 90 days
  - Requires written notice with orders

*This lease termination provision includes other types of leases, such as professional, business, agricultural and similar leases*

Residential Lease Terminations

**Joint Leases**

• Dependent’s lease obligation terminates along with Servicemember’s

• Landlords cannot hold dependents liable on a joint lease
Automobile Lease Terminations

- Servicemember may terminate an auto lease as follows:
  - Pre-service lease (lease signed before active duty service)
    - Can terminate if entering AD for 180 days or more
  - Leases executed while on active duty IF:
    - PCS from CONUS to OCONUS
    - PCS from Alaska or Hawaii to anywhere
    - Deployment for 180 days or more
  - Requires written notice w/orders and return of the vehicle w/in 15 days of notice

Cell Phone Contract Terminations

- Termination authorized when SM receives orders to relocate for 90 days or more to a location not supported by the contract
- Servicemember must provide written or electronic notice to the carrier
- Servicemember may keep phone number if relocation for 3 years or less
- Family members relocating with the SM also may terminate service
Evictions

• Basic Rule: Landlord can evict SM (or dependents) only with court order – no self help (landlord cannot do it on his own)

• For 2015, this section applies to rentals not exceeding $3,329.84 per month
  ➢ The amount increases yearly (calendar year) based on housing price inflation adjustment

• Servicemember must show material effect to receive judicial stay

Installment Contracts

• Prohibits self-help repossession of items purchased on installment contract
• Pre-service (pre active-duty) obligations only
• Common examples: Appliances, furniture, motor vehicles
• Requires court order before
  ➢ Termination for breach of contract
  ➢ Repossession
• Must show material effect to receive judicial stay of repossession
Mortgages

- Prohibits foreclosure without a court order
- Applies to pre-service (pre active-duty) obligations secured by a mortgage
- Must show material effect
- Court may stay the proceedings or adjust the obligation as equity requires

Residence for Tax Purposes and Voting Rights
Residence for Tax Purposes

General Rule: A Servicemember neither acquires nor loses domicile based on the presence in a state due to military orders.

- **Military Income**: Deemed earned in the state of domicile
- **Personal Property**: Deemed located in the state of domicile
- A SM’s nonmilitary income earned outside the state of domicile is not protected by the SCRA
Spouse Tax Rules

Military Spouses Residency Relief Act (MSRRA)

• SCRA now protects spouse’s income from taxation if domicile is same as SM’s
• Beware: Does not mean spouse can merely “pick” the SM’s domicile. Spouse must establish domicile under normal domicile analysis!

Servicemember Voting Rights

• A Servicemember’s home state (domicile) voter registration remains valid despite presence in another state due to military orders
• Be cautious about changing voter registration to the new (host) state
Spouse Voting Rights

- As of November 2009, a spouse’s home state (domicile) voter registration remains valid despite presence in another state due to Servicemember’s military orders IF:
  - Spouse is living with SM in the duty state, AND
  - Spouse has the same domicile as the SM

Warning Regarding Domicile

If Soldier (or Spouse under MSRRA) loses “contacts” with state of domicile, the “new” state might pursue domicile status (and attempt to tax the Soldier!)
Ways to Help Establish or Maintain Domicile

- Purchase a home or land (burial plot very effective)
- Register to vote
- Register vehicles
- Physical presence
- Driver’s license
- Membership in organizations
- Own bank accounts or investments

Motor Vehicle Registration & Fees

- If Soldier registers with home state, host state cannot require vehicle registration

- Otherwise, Soldier must comply with host state
  - But host state cannot apply property tax to the vehicle ("ad valorem" tax)
“Waiver” of SCRA Protections

Waiver of SCRA protections is allowed, but the waiver must be:
- In writing and at least in 12 point type
- Executed separate from the original obligation to which it applies
- Executed during or after the period of active duty

Other SCRA Protections

- Reinstatement of Private Health Insurance Upon Return to Civilian Life
- Suspension of Professional Liability Insurance During Active Duty
- Stays of Execution of Judgments or Attachments
Conclusions

• The SCRA provides numerous protections and benefits to Servicemembers in both the Active and Reserve Components

• SCRA protections may apply in both deployment and non-deployment situations

• Consult with a Legal Assistance Attorney for more detailed information regarding the numerous SCRA protections
Chapter 7—The Intersection of Civil Law and Oregon Veterans

Companion Materials for May 19th, 2016 MVLS CLE
“The Intersection of Civil Law and Oregon Veterans”

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The complete Companion Materials (402 pp., 1.3 MB) may be downloaded here:
http://tinyurl.com/MVL16-7-Supplement