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A New Way for Lawyers to Assist Veterans

Hillary A. Wandler

Alexander Blewett III School of Law at the University of Montana, hillary.wandler@umontana.edu

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A new way for lawyers to assist veterans

By **Hillary Wandler**, legal writing fellow
University of Montana School of Law

Did you know:

■ *As of Sept. 30, 2008, Montana had approximately 104,000 veterans. Montana has the second highest per capita veteran population in the nation. One in every six adults in Montana is a veteran.*¹

■ *Several Montana counties have more than 20 percent veteran populations.*²

■ *10,698 Montanans served in the military between 2001 and 2008. In the past three years, over 80 percent of men and women in the Montana National Guard have been deployed.*³

■ *For every fatality in Iraq and Afghanistan, 16 service members are wounded.*⁴ *This statistic does not take into account the 20 percent of soldiers returning from Iraq and Afghanistan who suffer from symptoms of PTSD or major depression.*⁵

The VA adopted President Abraham Lincoln's words in his second inaugural address as its motto: "To care for him who shall have borne the battle and for his widow, and his orphan."⁶ To fulfill this mission, the VA committed to "care for those injured in our nation's defense and the families of those killed in its service."⁷ As a result, any person who has served in "active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable" is qualified to receive benefits from the VA.⁸ A veteran's family members and survivors are also entitled to certain VA benefits.⁹

The VA offers two major benefits programs to qualified veterans: disability compensation for diseases or injuries incurred or aggravated in the line of duty (service-connected disability), and a pension program for disabilities not connected to active service.¹⁰ If a veteran establishes a service-connected disability, the severity of that disability is assigned a percentage evaluation. The veteran's disability rating corresponds to a set monthly compensation rate.¹¹ A veteran can appeal a denial of benefits or a disability rating to the Board of Veterans Appeals (BVA). The United States Court of Appeals for Veterans Claims reviews the BVA's decisions.

From the initial claim to the final appeal, the veteran seek-

ing benefits has the burden of proving he or she is eligible for VA benefits and entitled to a particular benefit.¹² Upon entering the VA claims process, a veteran encounters a 16-page initial claims form (with 7 pages of instructions), an often confusing network of statutes and regulations, and seemingly endless paperwork from the VA regarding the claim.¹³ The veteran is dealing mostly with lawyers who have years of experi-

Your opportunity to serve those who served us

The Montana Supreme Court, through its statewide Pro Bono Program in partnership with the University of Montana

School of Law, announces formation of Montana Attorneys For Montana Veterans (MAMV). MAMV is designed as a pro bono program to assist Montana Veterans with claims for disability benefits.

Here is how it works:

- Attorneys must to be accredited by the VA Office of the General Counsel.
- To become initially accredited, you must fill out a short 3-page application (VA Form 21a).
- An attorney's character and fitness to practice before the VA is presumed by certifying membership in good standing with the bar on Form 21a.
- For a fillable Form 21a, follow the link on the State Bar's website (www.montanabar.org) or go to www.va.gov/vaforms/va/pdf/VA21a.pdf.

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ence advancing the VA's position in statements to veterans and before the BVA.¹⁴

Not surprisingly, the VA Inspector General has reported that the single most important factor contributing to a veteran's successful benefits claim is that the veteran was represented by an advocate.¹⁵

Only attorneys and non-attorney agents who are accredited by the VA General Counsel can represent veterans at the regional level. Attorneys and non-attorney agents must be admitted to practice before the U.S. Court of Appeals for Veterans Claims before taking a veteran's appeal before that Court.

Montana's veterans service officers – powerful advocacy for veterans

Veterans service officers (VSOs) are non-attorney advocates who provide free representation to veterans preparing and fil-

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ing claims for benefits. VSOs can be state or county employees. National service organizations including Vietnam Veterans of America, The American Legion, Disabled American Veterans, The Military Order of the Purple Heart, and The Veterans of Foreign Wars also train and hire VSOs.

Montana's 104,000 veterans are served by 19 state-funded VSOs through the Montana Veterans' Affairs Division.¹⁶ Each VSO in the Montana Veterans' Affairs Division is fully trained, accredited, and certified. Montana VSOs are statistically highly effective in representing veterans at the regional level.

Veterans represented by Montana VSOs more than double their ultimate compensation amount over veterans who represent themselves.¹⁷ For every dollar of state investment in the Montana Veterans Affairs Division, the Division's VSOs attain \$102 in federal VA compensation to Montana veterans.¹⁸

Nevertheless, each Montana VSO serves a significantly higher portion of the state's veteran population than a VSO in any one of the surrounding states. In contrast to the 104,000 veterans in Montana who are served by 19 state VSOs, the 58,000 veterans in North Dakota are served by 53 county and tribal VSOs; the 74,000 veterans in South Dakota are served by 79 state, county, and tribal VSOs; and the 137,000 veterans in Idaho are served by 41 county VSOs.¹⁹ In addition, VSOs don't often represent veterans in appeals to the BVA or the United States Court of Appeals for Veterans Claims. Current statistics show that even if veterans were represented by VSOs at the regional level, 64 percent of veterans appealing to the United States Court of Appeals for Veterans Claims appeal pro se.²⁰

How Montana lawyers can help

Much like Montana's expert VSOs, Montana attorneys educated in the VA benefits system and appeals process could play an integral role in our state's response to those who have served and are serving this country. By assisting clients in identifying potential claims,

gathering all relevant evidence to support those claims, developing a complete record, navigating the maze of paperwork, and screening any frivolous claims before they reach the BVA, attorneys would "improve the quality and reduce the administrative cost of [VA regional and appeal] proceedings."²¹

Unfortunately, even though representation is critical to a veteran's successful benefits claim, lawyers educated in the VA claims process and willing to represent veteran claimants are difficult to find. Representatives from the National Veterans Legal Services Program report the number of lawyers willing to represent VA claimants falls "far short of the demand."²² Montana is no exception. Only seven Montana lawyers are listed as admitted to practice before the U.S. Court of Appeals for Veterans Claims, and only three Montana lawyers are accredited by the VA General Counsel.²³

The Montana Bar can rise up to meet the ever-increasing need for knowledgeable and effective veterans' advocates. Lawyers educated in the many resources available to Montana veterans and active service members can provide helpful and accurate referrals. As Montana VSOs have demonstrated, effective representation can significantly increase a veteran's chance at submitting a successful benefits claim and nearly double a veteran's ultimate compensation. Montana attorneys should come alongside Montana's VSOs to meet the legal needs of those who have served and are currently serving our country overseas and here at home. Let us help bind up Montana's wounds and care for those who have borne the battle.

HILLARY WANDLER is the UM School of Law's legal writing fellow. She teaches legal analysis and legal writing, and will teach the School of Law's inaugural course offering on veterans' benefits law this summer. She joined the School of Law after clerking for both Judge James R. Browning of the U.S. 9th Circuit and Chief Judge Donald Molloy of the U.S. District Court for Montana, and practicing civil litigation with the Missoula law firm Garlington, Lohn & Robinson. Ms.

Wandler is admitted to practice before the state and federal courts in Montana and the U.S. Court of Appeals for Veterans Claims, and is accredited to practice before the Department of Veterans Affairs. She received her BA cum laude from Concordia College and her JD with high honors from the UM School of Law.

NOTES

1. Jt. Econ. Comm., "Fight Now Pay Later: The Future Costs of Funding the Iraq War," 110th Cong. (June 12, 2008) (testimony of Hon. Brian Schweitzer, Governor of Montana); FY 2008 Performance & Accountability Report, Dept. Veterans Affairs Rep. at 15 (VA 2008), www.va.gov/budget/report/2008/index.htm (last updated May 7, 2009).

2. Natl. Ctr. for Veterans Analysis & Statistics, "Montana: Veteran Population by Age, by Sex, by County," www1.va.gov/vetdata/docs/MONTANA.pdf (last updated May 7, 2009).

3. Montana Capitol Report, Joint Resolution 9 – Shows Support for our Troops, www.mtcapitolreport.org/legislators/house-joint-resolution-9-shows-support-for-our-troops (last updated May 7, 2009).

4. See Linda Bilmes, Soldiers Returning from Iraq & Afghanistan: The Long-Term Costs of Providing Veterans Medical Care and Disability Benefits 2 (Harvard Univ. JFK Sch. of Govt. Faculty Research Working Paper Series No. RWP07-001) (Jan. 2007) (available at <http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP07-001>). Bilmes recognizes the different definitions of "wounded" used by the Department of Veterans Affairs and the Pentagon. Due to its narrow definition of "wounded in action," the Pentagon reports a lower estimate that approximately seven service members are wounded in action for every fatality in Operation Iraqi Freedom (OIF)/Operation Enduring Freedom (OEF). See Dept. of Def., "Global War on Terrorism: Casualties by Military Service Component – Active, Guard and Reserve – October 7, 2001 through May 2, 2009," http://siadapp.dmdc.osd.mil/personnel/CASUALTY/gwot_component.pdf (last updated May 7, 2009).

5. See Rand Corporation News Release, "One in Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression," www.rand.org/news/press/2008/04/17/ (last updated May 7, 2009).

6. Public & Intergovernmental Affairs, "The Origin of the VA Motto," www1.va.gov/opa/feature/celebrate/vamotto.asp (last updated May 7, 2009). President Lincoln spoke during the final stages of the Civil War, encouraging all to "bind up the nation's wounds" and "do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." *Id.*

7. *Id.*

8. 38 U.S.C. § 101(2) (2006); 38 C.F.R. § 3.1(d) (2008).

9. See Dept. of Veterans Affairs, Federal Benefits for Veterans, Dependents and Survivors 85 (VA 2009) (available at www1.va.gov/opa/feature

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- Send application to the VA Office of the General Counsel (listed on the form).

- An attorney may not assist a veteran with a VA benefits claim until the VA has accredited the attorney.

- In order to maintain accreditation, you must complete 3 hours of qualifying continuing education within 12 months of the date of accreditation.

- An additional 3 hours of continuing education must be completed within 3 years from the date of accreditation.

- The University of Montana School of Law is offering a unique opportunity to obtain the 3-year obligation of 6 credits in a single program on July 13 and 14 (1 p.m. to 4 p.m. each day).

- Additional courthouse video sites broadcasting the CLE will be established based on enrollment.

- The CLE is designed to familiarize you with representation before the VA, claims procedures, basic eligibility for VA benefits, right to appeal, disability compensation, dependency and indemnity compensation, and pension. Additional self-study is anticipated as with any new area of the law.

Important Note: You must receive VA accreditation prior to attending this CLE in order to satisfy the accreditation requirements. Do not delay in submitting your application for accreditation. It is indicated that the application process takes 30 days, but is known to take up to 60 days. You must allow sufficient time in order to meet the July 13th CLE date.

To register for the CLE, obtain a fillable PDF version of the Application for Accreditation or to request a videocast location site, contact the Supreme Court's Statewide Pro Bono Coordinator, Patty Fain at pfain@mt.gov or call (406) 794-7824.

[/index.asp](#) [hereinafter Federal Benefits].

10. 38 U.S.C. §§ 1110, 1131, 1521. Veterans and their families may qualify for a wide variety of additional federal and state benefits, but compensation and pension are the major benefits systems within which veterans and dependents typically need representation.

11. See Federal Benefits at 20. A veteran who has a disability rated as 30 percent or more disabling is entitled to additional monthly compensation. *Id.*

12. 38 U.S.C. § 5107(a) (2006).

13. See VA Form 21-526 (available as a fillable form at www.vba.va.gov/pubs/forms/VBA-21-526-ARE.pdf); Jonathan Creekmore Koltz, "Unsticking the Deck: In Defense of the Veterans Benefits, Healthcare, and Information Technology Act of 2006," 17 Fed. Circuit B.J. 79, 79-80 (2007).

14. See Koltz, *supra* n. 12, at 80.

15. See Ronald B. Abrams, "Representing Veterans in the Battle for Benefits," 42 *Trial* 30, 32 (Sept. 2006).

16. See http://dma.mt.gov/mvad/addresses/office_addresses.htm for a list of Montana Veterans Affairs Division VSOs. Montana veterans who belong to national service organizations may also go to national VSOs, some of whom are who are located in Montana.

17. Mont. Veterans' Affairs Div., Statistics Sheet (prepared by Joe Foster, Administrator Mont. Veterans Affairs Div.) (on file with the author).

18. Mont. Bd. of Veterans Affairs, Biennial Report (July 1, 2008) (prepared by Joe Foster, Administrator Montana Veterans Affairs Division) (on file with the author).

19. N.D. Leg. Council Staff for the Pub. Safety Comm., "Delivery of Veterans' Services – Other States' Efforts and County Veterans' Service Officer Certification" (Nov. 2007) (available at www.legis.nd.gov/assembly/60-2007/docs/pdf/99146.pdf); FY 2008 Performance & Accountability Report at 15; Idaho Veterans Services, 2008 – 2009 Veterans Resource Directory, www.veterans.idaho.gov/OVA%20Bulletins/2008%20-%202009%20Directory.pdf (last updated May 7, 2009).

20. U.S. Ct. of App. for Vet. Claims, Annual Reports 1999–2008 (available at www.vetapp.gov/documents/Annual_Report_-_20081.pdf).

21. See Koltz, *supra* n. 12, at 93.

22. See Barton F. Stichman & Ronald B. Abrams, *Veterans Benefits Manual 7* (LexisNexis 2007).

23. See U.S. Ct. of App. for Veterans Claims, Public List of Practitioners, www.vetapp.uscourts.gov/practitioners/; select Montana Location (last updated May 7, 2009); Dept. of Veterans Affairs Office of the General Counsel, Accreditation Search, www.va.gov/ogc/apps/accreditation/index.html; select Download Complete List of Accredited Attorneys, Claims Agents, or Representatives in Excel (last updated on May 8, 2009).

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Correspondence to:
PO Box 9433
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drdavis@patrickdavisphd.com

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