New York State Bar Association

Report and Recommendations of Special Committee on Veterans

9/5/2012

Approved by the House of Delegates on November 17, 2012

NEW YORK STATE BAR ASSOCIATION
Resolution Adopted by House of Delegates
November 17, 2012

WHEREAS, the NYSBA expresses its appreciation to veterans of the armed forces for their service to our country; and

WHEREAS, veterans of service in the armed forces often have the need for specialized legal services, tailored to military service and culture; and

WHEREAS, the New York State Bar Association's Special Committee on Veterans was appointed to focus on the unique legal needs of military veterans and service members; and

WHEREAS, the Special Committee has completed a report recommending the expansion of veterans courts throughout New York State; ongoing training opportunities for attorneys who want to provide civil legal services to veterans; the establishment of local bar committees to address military law and veterans' issues; and the development of legal referral services to veterans by the New York State Bar Association's Lawyer Referral and Information Service and by local bar lawyer referral services;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Special Committee on Veterans; and it is further

RESOLVED, that the Committee on Committees is directed to conduct a review of the Special Committee on Veterans and recommend whether it should be designated as a standing committee of the Association; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem warranted to implement this resolution.

STATEMENT OF PURPOSE

From colonial times to the present day, brave New Yorkers have stepped forward to answer the call of liberty. New York Militiamen fought and died on the field of valor during the struggle for this nation's independence, and New York soldiers made the ultimate sacrifice on the bloody battlefields of the Civil War. This trend continued through the 20th Century's World Wars, Korea, Vietnam, and recent Persian Gulf conflicts. As one of this country's most populous states throughout its history, New York's contribution to American military history is undeniable. She and her valorous citizens have played a tremendous role in ensuring the freedom of this nation.

Unfortunately, for most of New York's long history, the legal needs of her returning Soldiers, Sailors, Marines, Airmen and Coast Guard members have been largely ignored. Upon returning from Vietnam, brave veterans from New York and other states were treated at times with scorn, and scant attention was paid to their requirements for quality legal care. Virtually no thought was given to providing *specialized* legal services, tailored to military culture, custom, or need.

Active duty military service does little or nothing to prepare returning veterans for the legal challenges they may face upon reintegration with civilian society. No-cost, primary legal care is provided to active duty military members, thus creating false expectations for the days after the *Certificate of Release or Discharge from Active Duty* is issued. Additionally, the "warrior mentality" (so aptly created and fostered in a military climate) may lead veterans to the false perception that asking for help is nothing more than a sign of weakness.

Fortunately, history has begun to change for veterans. Over the course of the last few years, caring New York legal practitioners have initiated specialized efforts aimed at taking care of our warriors. Local bar associations from Erie County to Nassau County have formed ad hoc and standing committees designed to address the legal needs of the men and women returning from combat and from service to the Empire State. In 2008, the nation's first Veterans Treatment Court was formed in Buffalo, led by Judge Robert T. Russell, Jr., and it is supported by a cadre of amazing volunteer veteran mentors. Since that time, Veterans Treatment Courts

have been and are being cultivated throughout New York and across the United States. At present, there are over 100 such legal treatment forums nationwide.

In 2011, then-incoming NYSBA President Vincent E. Doyle III elected to place veterans' legal rights at the top of his agenda. To that end, he created NYSBA's Special Committee on Veterans. Its mission has been to explore the quality and variety of legal services provided to veterans in New York State, while seeking to improve upon these services in a unified, state-wide manner. With that goal in mind, the Special Committee and its many members have spent the last year traveling, listening, and learning. Many of us were already deeply involved in veterans' affairs at the local, state, and even national level. We took our experiences to work with us on these issues.

In addition to Immediate Past President Doyle, newly elected President Seymour W. James, Jr., and the rest of the Executive Committee and House of Delegates, the Special Committee wishes to thank Gloria Herron Arthur, Esq. for her untiring support as NYSBA liaison, as well as Ms. Debra Harrington for her administrative assistance. The Special Committee is also grateful for the cooperation of the Office of Court Administration (OCA) and its Chief of Policy and Planning, the Honorable Judy Harris Kluger. Lastly, the Special Committee extends its sincere thank you to each of the dedicated members of the committee who have worked tirelessly to achieve our ambitious goals and objectives. A copy of the 2011 Committee roster is annexed hereto as **Appendix "A"**.

GOALS AND OBJECTIVES OF SUBCOMMITTEES

The Special Committee formed three broad subcommittees designed to address veterans' legal needs from various angles. The *Veterans Court Subcommittee* examined the nature and extent of Veterans Courts existing and forming throughout the state. It further sought to propagate fertile conditions for the creation of more veteran-oriented courts throughout New York. Finally, it explored legislative and administrative mechanisms to utilize in order to break down jurisdictional barriers and ensure equal access to Veterans Courts by New York's warriors in need.

The *Legal Services Subcommittee* was created to explore the ways in which quality legal representation may be made available to all veterans, regardless of where they reside in New

York State. Their purview included both paid and *pro bono* services. Among other activities, this subcommittee has been working with NYSBA's *Committee on Lawyer Referral Service* and with the legal services community to achieve this objective. One goal was to create a model proposal for a one-stop telephone or online service to assist veterans, service members and their families by directing them to qualified legal counsel to assist them with their legal needs. Another goal was to develop a comprehensive statewide resource directory which would identify existing civil legal services programs that have specialized services for veterans, pro bono legal services for veterans, medical and mental health services, veteran administrative services, drug treatment courts, housing and other essential services.

The Special Committee also initiated the *Legal Training Subcommittee*. The Special Committee recognized that while New York lawyers are generous in giving of their time in a volunteer capacity and that they are eager to assist the state's veteran community, in order to be most effective attorneys handling veterans' civil legal needs will have to become familiar with military culture and psychology and the potential impact on veteran reintegration to civilian life and the ways military culture may affect how a veteran deals with his or her legal issues. Education is the key to bridging the gap which exists between military culture and legal culture. The *Legal Training Subcommittee* is working to present and to distribute continuing legal education (CLE) programs designed to meet these needs.

VETERAN COURT SUBCOMMITTEE INITIATIVES

Since their creation in the 1990s, problem-solving courts have helped hundreds of thousands of people, who would otherwise have served terms of confinement, to overcome the afflictions underlying their behavior and move on to lives of greater richness and productivity. By directly treating the affliction (self-imposed or otherwise) while forestalling and eventually mitigating or eliminating criminal convictions, problem solving courts serve both societal and individual needs in a remarkably effective manner. Substance abuse, mental illness, gambling addiction, domestic violence and other societal ills are among the issues tackled head-on by problem-solving courts and their caring cadre of personnel including judges, counselors, attorneys, support staff, and governmental and non-governmental agencies that focus on the problems at issue.

Buffalo City Court Judge Robert T. Russell, Jr. was well aware of the efficacy of problem-solving courts when he spearheaded the nation's first Veterans Treatment Court in January 2008. Judge Russell had been presiding over substance abuse and mental illness courts for over 10 years at that time. Noticing that a disproportionate number of defendants in such courts were veterans, service-members or family members of that demographic, Judge Russell (who had no prior military service) took the bold move of creating Buffalo's Veterans Treatment Court. The Buffalo Veterans Treatment Court is a collaborative effort among various law enforcement bodies, other problem solving courts, the Buffalo Veterans Administrative Health Care System and other service providers who work with veterans.

From the start, Judge Russell worked with two Vietnam veterans, Jack O'Connor and the late Hank Pirowski, to create a volunteer force of veteran mentors to work individually with veteran defendants on a case-by-case, transaction-by-transaction basis. Spanning the spectrum of career and life paths, Buffalo's Peter Reibel Veteran Mentor Group is composed of over 45 dedicated attorneys, teachers, counselors, accredited veteran service advocates, police officers, successful business men and women, and many others. In court each week, these mentors work with veterans to enforce the court's mandates, to ensure that vets are receiving the services to which they are entitled, and to solve persistent problems possibly impeding their paths to success (such as homelessness, lack of transportation, unemployment, and lack of education). Perhaps the mentors' most important function is to demonstrate to their vets on a weekly basis that, no matter how many difficulties the vets experience, there is a group of fellow vets out there who will never give up on them. Judge Russell's unwavering commitment combined with the unique veteran mentorship component has created an undeniable success that has transformed the lives of veteran graduates of the program.

Additionally, Buffalo's Veterans Treatment Court has become a weekly marketplace of services and opportunities for veterans. Present in court each week are attorneys, housing specialists, education counselors, VA benefits advisors, and other professionals who attend with the sole goal of helping veterans in need. As word of this regular gathering has gotten out, veterans who have not gotten in trouble with the law have come to Veterans Treatment Court seeking assistance.

Finally, and perhaps most significantly, the humanity from the bench, from caring substance abuse and mental health counselors, from properly trained prosecutors and defense attorneys and from dedicated court personnel (some of whom are veterans themselves) serve to lift the troubled veteran in his or her time of need. For many of these individuals, their time in service to their country was the proudest moment of their lives. Although they have stumbled in their journeys beyond military service, the treatment they receive in Veterans Court serves to restore their dignity and to re-instill the pride and core values that the veterans fostered during military service. A truly remarkable transformation takes place during a veteran's journey through the Veterans Court process.

As indicated above, one of the Special Committee's main goals was to explore and to facilitate the spread of Veterans Treatment Courts throughout New York State. To this end, we created a subcommittee on Veterans Courts. The subcommittee and the committee as a whole have spent the past year exploring the many different types of Veterans Courts that currently exist in the Empire State. About one dozen treatment courts exist throughout New York State, and the Special Committee has found that no two courts operate in the same manner. Some courts strictly enforce procedures to provide the vet with the sense of good order and discipline that he or she formerly experienced while wearing a uniform. Other courts have not designated themselves "Veterans Courts" *per se*. Rather, they are simply outgrowths of existing treatment courts which work collaboratively with specialized agencies while providing unique understanding for the needs of the military community. All of the courts provide exceptional examples of defense attorneys, district attorneys, judges, law enforcement officials, and volunteers coming together in an otherwise adversarial system to honor our veterans by giving them the services and opportunities they deserve.

While the Special Committee recognizes that its aspiration of implementing 62 Veterans Treatment Courts in each of New York's counties remains a long-term goal, we wish to continue to work toward that objective. In the meantime, we seek to facilitate the means by which every veteran in New York State may gain access to a Veterans Court. We hope to help implement sufficient veterans courts and treatment tracks throughout New York State, such that a veteran living in a jurisdiction without a veterans court may have his or her case referred to a county where those services exist, preferably in a neighboring county.

With this goal in mind, the Special Committee seeks the optimal and most effective means of bringing about this expansion either through amended court rules, changes to existing legislation, or the creation of new legislation. Working closely with NYSBA's Governmental Relations Department, the Special Committee has prepared a position statement that encapsulates its goals toward providing broad access to Veterans Treatment Courts to as many New York State residents as possible. This position statement is appended to this report as **Appendix "B"**.

The statement provides an in-depth exploration of the causes of many common problems experienced by veterans, including post-traumatic stress disorder (PTSD). The statement includes an excerpt from Judge Russell's seminal article on the subject, *Veterans Treatment Courts Developing Throughout the Nation* (2009). The statement further provides a clear definition of the Special Committee's goals in developing specific criteria to bring about expanded participation in Veterans Courts statewide.

One example of the Special Committee's approach to expanding existing legislation to accomplish this priority is a proposed amendment of the Judiciary Law (found at **Appendix "C"**). Under this approach, a new Article 5-C entitled "Veterans Courts" would be added to the present title. This new article would consist of section 178-a ("Establishment of courts for veterans"), section 178-b ("Transfer of cases to courts for veterans; how effectuated"), and section 178-c ("Procedure in a court for veterans upon transfer of case thereto").

Obviously, in the present era of economic hardship and strict budgeting measures, the Special Committee anticipates some challenges in light of the potential for increased expenditure to establish new veterans courts. Nevertheless, it is apparent that the general mood of New Yorkers and Americans is extremely favorable to expanding veterans' rights and taking care of vets and their families. Therefore, the Special Committee respectfully urges NYSBA to consider making the proposed legislative amendment part of its Legislative Initiatives Agenda for the next year and to seek a sponsor for same. With an ever increasing number of veterans returning to New York from service, now is the time to ensure that access to Veterans Treatment Courts is readily available for any and all veterans who might need it, regardless of where s/he may reside in the state. The current window of favorable public sentiment toward veterans may not remain open forever. Now is the time to act.

On other fronts, the Special Committee's Veterans Court subcommittee continues to make significant progress. The subcommittee's chair, Sky Pena-Davis, has ably guided the subcommittee in the creation of helpful guides to facilitate the process for jurisdictions seeking to establish Veterans Courts, or for those individual practitioners who seek to help vets and their families. An example of this work may be found in the accompanying Veteran Court Mentor Handbook (**Appendix "D"** herein) created by the New York State Unified Court System's Office of Policy & Planning. This work was prepared collaboratively with the Special Committee with Ms. Davis playing a pivotal role in her capacity as a Unified Court System employee. At present, this entity is working to produce a Directory of Veterans' Resources for New York State Courts.

LEGAL TRAINING SUBCOMMITTEE INITIATIVES

Under the capable leadership of retired Supreme Court Justice Charles Heffernan, the Special Committee Subcommittee on Legal Training developed a day-long CLE program for attorneys, which was held during the 2012 NYSBA Annual Meeting in New York, New York. Recognizing that with the exception of military benefits issues the legal needs of veterans are not unlike the needs of any civilian, the program's goals were to familiarize attendees with military culture and psychology and the potential impact on veteran reintegration to civilian life while raising awareness about the many different ways military culture may affect how a vet deals with his/her legal issues. Attendees were educated about some of the realities of military service, the personal experiences of military panel members, the mental health issues returning veterans may face such as Post-Traumatic Stress Disorder, Traumatic Brain Injury, substance abuse, military sexual trauma, and alcoholism. Attendees also learned about how Veterans Treatment Courts operate. Additionally, registrants were provided an overview of the complex area of law governing military benefits, the Uniformed Services Employment and Reemployment Rights Act, and the significance of a veteran's discharge status.

The first CLE training was very successful, and attended by more than 130 attorneys. Many of the attendees expressed an interest in providing *pro bono* services to veterans. The Special Committee intends to provide regular ongoing training opportunities for attorneys who are interested in providing civil legal services to veterans – whether paid or *pro bono.* Future training programs also will endeavor to bridge the gap between military culture and legal culture.

The Special Committee surveyed existing Veterans Courts and hybrid Courts that exist throughout the state and found that attorneys representing veterans often have little knowledge or experience in the complex area of laws governing veterans benefits. Attorneys who practice in this area often represent veterans in multiple states and jurisdictions. Fees are paid on a contingency basis based on the increase in the benefit that is secured. Further, the Veterans Administration (VA) requires that attorneys who wish to assist veterans in preparing and submitting claims for benefits must meet certification and accreditation requirements imposed by the VA pursuant to 38 C.F.R. §14.627(a). Veterans organizations have non-attorney staff members who meet VA certification requirements and are available to assist veterans with regard to their benefits. Consequently, while the Special Committee's CLE program provided attendees with an orientation to benefit law issues, the Special Committee recognizes that veterans benefits is a complex and detailed substantive area of law and encourages attorneys representing veterans in civil legal matters to be aware of potential benefit claims issues and to make appropriate referrals to attorneys who practice in this area of law or to veterans organizations who offer free representation and advice to veterans on benefit issues. Because of the complexity of the laws governing veterans benefits and the availability of such assistance through veterans organizations, the Special Committee does not intend to focus its future training efforts on preparing attorneys to obtain VA certification in benefit claims or recruiting attorneys to handle these claims.

LEGAL SERVICES SUBCOMMITTEE INITIATIVES

Many general practitioners have the ability to address the related legal problems that often occur when the veteran enters the criminal justice system. Veterans who have been arrested for a criminal charge may have related divorce, custody, support, bankruptcy, foreclosure, debt collection or eviction problems. Veterans in these predicaments, however, often do not have financial resources to retain attorneys for these related matters and assigned counsel is available only for custody-related matters.

The Special Committee found that many legal services programs have established veterans initiatives to assist veterans and their family members with civil legal problems. Many of these legal services programs are identified in the Resource Manual, referred to above. Legal

services providers are also partnering with law schools, veterans service organizations and local bar associations in an effort to meet the civil legal needs of veterans.

The subcommittee on legal services also found that some local bar associations already have developed successful veteran initiatives. Since 2007, the City Bar Justice Center has published a 46-page reference guide for veterans and Nassau County maintains a Veterans Advocacy Center. The City Bar also has a pro bono program that assists veterans with benefits claim issues. The Onondaga County Bar, through its Volunteer Law Project, has a veterans' clinic at the VA Hospital in Syracuse. In Albany County, veterans' legal needs are being addressed by the Legal Aid Society of Northeastern New York and The Legal Project. Both providers work collaboratively with Albany Law School's Veterans Pro Bono Project, the Stratton V.A. Medical Center, the New York State Bar Association, Vet House, a residential program for homeless veterans, and Hiscock and Barclay LLP.

The Special Committee believes that many members of the New York State Bar would be willing to assist veterans with their civil legal problems and respectfully recommends that each local Bar institute and/or expand their committees to not only include military law, but veterans' issues. Although veterans who are lawyers are often involved in these committees, the Special Committee recommends that membership be expanded to include all lawyers who have training and background in the various types of civil legal problems from which veterans suffer disproportionately. Expanding the membership pool of local bar association veterans committees will ensure that more qualified attorneys will be available to assist veterans who may not be enrolled in Veterans Treatment Courts or experiencing disability benefits issues.

NYSBA operates a Lawyer Referral and Information Service in forty-four counties. In addition, local Bars operate in most major metropolitan areas that cover the other counties in the state. A survey of the referral services in the state determined that many of the services have lawyers who handle "military and veteran" matters, but have very few calls looking for representation. The Special Committee recommends that NYSBA's Lawyer Referral and Information Service consider developing a panel of lawyers who are willing to assist veterans in various legal matters. Veterans would be able to call the referral service and be able to speak to a lawyer for a free consultation for up to a half an hour by identifying him or herself as a veteran. Normally, most referral services allow for a nominal charge for the initial contact.

The program, if adopted by NYSBA, could run from Veterans Day through Memorial Day. The proposed program could be supported by an advertising budget and public service announcements so that all veterans would know that legal services are available to them. If the veteran wishes then to retain the lawyer, the lawyer would agree to take cases at a reduced hourly rate of 25% off his or her existing fees or flat fees. This proposal is not intended to suggest that there should be a discount for contingency fees such as personal injury, workers' compensation, social security disability or veterans' benefits. Such a program would allow lawyers who have an interest in honoring veterans for their service to be available to them at a reduced rate. This proposal also urges that a dedicated 800 line be established at NYSBA to receive the telephone calls and make the referrals to the lawyers who sign up for this veterans LRIS initiative.

In addition, the Special Committee recommends that NYSBA encourage local Lawyer Referral programs to adopt and implement similar legal referral services for veterans. It also recommends that NYSBA encourage existing pro bono programs to consider developing veteran-specific initiatives such as those which have been established in Albany, New York City and Syracuse.

Albany Law School (ALS) has a very active pro bono program for veterans. ALS students volunteer with local legal services programs and veterans advocacy groups to assist veterans with a variety of civil legal issues. Syracuse University Law School is also developing a veterans' law clinic program. Funding and staffing of the clinic is in the works and implementation may be off a few years. In the meantime, a group of students have formed VISON (Veterans Issues, Support and Outreach Network), whose purpose is to provide pro bono opportunities for students interested in serving veterans. In the meantime, many students at the law school have expressed interest in getting started on programs that are specific to veterans' legal needs. It is suggested that the other law schools in the state consider adopting and implementing veterans law clinics to provide law students with experience and veterans with additional resources to address their needs. There are currently at least ten law schools in the country that have successfully implemented veterans legal clinics.

The Legal Services Subcommittee is deeply grateful to member Timothy J. Fennell for his contributions to the Special Committee and especially to the Legal Services subcommittee. Mr. Fennell also serves on the NYSBA Committee on Lawyer Referral Service and was

instrumental in assisting the Special Committee to develop this subcommittee's recommendations.

CONCLUSION

In closing, the Special Committee respectfully asks that it be made a permanent standing committee in order that we may continue to make progress on the critical initiatives outlined in this report. If the Special Committee is made permanent its goal is to continue to identify and develop strategies which will provide New York veterans and their families the quality legal services they have so richly earned through their service on behalf of their country.

Respectfully submitted,

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APPENDIX “A”

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APPENDIX “B”

Veterans Treatment Courts[1]

The New York State Bar Association has a long history of adopting policies to assure access to New York's justice system for all members of our society. The principle that everyone is entitled to justice is a fundamental component of our democratic form of government. In addition to strong support for adequate funding for legal services organizations and commitment to pro bono legal services for the impoverished, the Association also encourages the development of innovative policies to reach the goal of access.

A program to enhance and promote Veterans Treatment Courts is consistent with Association's efforts to assure access to justice. Further, we submit that a program to promote the utilization of Veterans Treatment Courts throughout the state would increase public trust and confidence in our system of justice.

American military veterans are unique members of our society who may have unique problems that inhibit their transition from active military service to a normal civilian life. Veterans Treatment Courts provide an effective means for recognizing the needs of veterans, while ensuring public safety and benefit for our communities.

Many veterans struggle with the effects of problems from their service, such as post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), mental illness, and substance abuse or addiction. Veterans Treatment Courts follow therapeutic and collaborative approaches similar to models used by drug and mental health courts. Within the framework of the criminal justice system, these models involve a court-based system of assessments, treatment, review

[1] Note: Portions of this report draw from themes and conclusions in the Report and Recommendations of the American Bar Association's Commission on Homelessness & Poverty. February 2010.

hearings, and graduated sanctions geared to avoiding incarceration when possible. Also, within the context of civil court proceedings, these models may ensure that veterans receive appropriate legal representation and services via the United States Department of Veterans Affairs and other community-service organizations that assist with housing, employment, and family matters.

Since 2001, more than 2.25 million U. S. troops have deployed to Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). A RAND Corporation study found that 31% of Americans who served in Iraq and Afghanistan have a service-related mental-health condition or TBI.[2] The study also found a continuing stigma surrounding mental health issues that prevented many veterans from reporting problems or seeking help for psychological injuries.

If left untreated, these conditions can and do cause the disruption of families, the loss of employment, and the triggering of actions that result in criminal prosecution. Such adversity for veterans often leads to abuse of alcohol and drugs, which accelerates a downward spiral toward increasingly severe consequences.

In the context of criminal cases, Veterans Treatment Courts depend on the collaboration of practitioners and judges, along with the U. S. Department of Veterans Affairs and other treatment providers in the community so that the veteran recovers and the risk of recidivism is reduced or eliminated. Similarly, such an approach may be used in civil court to assist veterans faced with loss of employment, government benefits, or housing, and other crises that prevent them from living normal lives and contributing to the community.

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[2] *Invisible Wounds of War: Summary and Recommendations for Addressing Psychological and Cognitive Injuries*, RAND Corporation, MG-720/1-CCF, 2008, 64pp.

How Veterans Treatment Courts Operate

(The Buffalo Experience)

Many advocates of Veterans Treatment Courts recommend a framework within which courts have the flexibility to develop models that work best in their particular environments and achieve the most positive outcomes.

The Honorable Robert T. Russell presides over the Buffalo Veterans Treatment Court, which was the first of its kind when it began in 2008. The court accepts veterans who have a clinical diagnosis of serious and persistent mental-health disease and those with a primary diagnosis of a substance dependency. Basic principles of treatment have been modified or tailored to meet the needs of veterans.

The following is an excerpt from an article written by Judge Russell about the Buffalo experience[3]:

> Eligible veterans for the court are identified using evidence-based screening and assessments and are then given the option to participate in the program. They have been assessed as having a clinical diagnosis of substance dependency or abuse, a clinical diagnosis of a mental-health disease, or both. These veterans, who are also charged with committing typically nonviolent felony or misdemeanor offenses, are diverted from the traditional criminal court to the specialized veterans treatment court. The treatment court program provides the veteran with the tools to manage their psychological, dependency, and social issue and to lead productive, law-abiding lives. The mission of veterans treatment court is to successfully habilitate veterans.
>
> After eligible veterans are identified, assessed, and referred to the veterans treatment court, they are then linked with a program of services fashioned to meet their individual

[3] Russell, R. (2009). *Veterans Treatment Courts Developing Throughout the Nation*.

needs. The court's staff and volunteer veteran mentors assist the veteran with an array of stabilization services, such as emergency financial assistance, mental-health/trauma counseling, employment and skills training, and safe housing, advocacy, and other supportive services. At regular status hearings, treatment plans and other conditions are periodically reviewed for appropriateness, incentives are offered to reward adherence to court conditions, and sanctions for non-adherence are handed down. Completion of the program is defined according to specific criteria.

One unique component of veterans treatment court is the mentor program. The mentor program is composed of volunteer veterans and active-duty soldiers, who freely give of their time to mentor, peer to peer, the participating members of the treatment court program…. Our experiences have shown that veterans were more likely to respond more favorably to another veteran than to others who did not have similar experiences. It is anticipated that the mentors' active, supportive relationship, maintained throughout treatment, would increase the likelihood that a veteran will remain in treatment and improve his or her chances for sobriety and law-abiding behavior.

Veterans Treatment Courts serve as a way for the criminal-justice system to do its part in helping our nation's veterans to overcome these issues and obstacles in their lives. In addition to reducing crime and improving public safety, these courts provide the justice system the opportunity to do something proactive, to assist those who have served our country to get their lives back on track.

Components of the Veterans Treatment Court Model

Although the Veterans Treatment Court is a relatively recent development, certain principles or components have been recognized as necessary to meet the objective of providing afflicted veterans with the means to obtain treatment and services, normalize their lives, and carry on as contributing members of society. Necessary components of a successful program involve the following:

- Voluntary participation by veterans;
- Coordination of activities with federal agencies, community-based service providers and local agencies;
- Mentoring by other veterans;
- Flexibility for local officials; and,

- Tracking outcomes.

Voluntary participation by veterans. Participation in a Veterans Treatment Court is voluntary, so as to ensure that the veteran is guaranteed due process under law. Prosecutors and defense counsel should work with the criminal court to determine appropriate candidates for participation in the program. The option of participation in the program and the goals of the program should be explained to the defendant by legal counsel. Once in the Veterans Treatment Court, the judge should engage in discussion with the veteran about the program and its goal to help the veteran achieve recovery. Upon successful completion of the plan of treatment or services, criminal charges would be dismissed, thereby preventing a "conviction" from appearing on the veteran's record.

Coordination of activities with federal agencies, community-based service providers and local agencies. The Veterans Treatment Court should work with the U. S. Veterans Administration and other service providers to establish criteria for participation in the program. The agencies provide the court with periodic progress reports.

Mentoring by other veterans. Mentoring by other veterans, with whom the defendant has shared or has had comparable experiences, helps create an environment to effectively promote the veteran's willing participation in the program.

Flexibility for local officials. Local officials should have the authority and discretion to determine how the Veterans Treatment Court would work best in their community. For example, local officials should determine what charges qualify as appropriate for a defendant's case to be transferred to Veterans Treatment Court.

Tracking outcomes. In order to determine the long-term costs and benefits of Veterans Treatment Courts, specific criteria should be developed in order to measure successful participation by veterans in programs that lead to recovery of the individual, while ensuring public safety and long-term benefit for our communities.

Conclusion

The New York State Bar Association supports a program to enhance and promote Veterans Treatment Courts as a mechanism to enhance assure access to justice for America's military veterans who have unique problems that inhibit their transition from active military service to a normal civilian life. Veterans Treatment Courts provide an effective means for recognizing the needs of veterans, while ensuring public safety, long-term benefit for our communities, and increased public trust and confidence in our system of justice.

APPENDIX “C”

Section 1. The judiciary law is amended by adding a new article 5-C to read as follows:

ARTICLE 5-C
VETERANS COURTS

Section 178-a. Establishment of courts for veterans.

Section 178-b. Transfer of cases to courts for veterans; how effectuated.

Section 178-c. Procedure in a court for veterans upon transfer of case thereto.

§ 178-a. Establishment of courts for veterans. The chief administrator of the courts, by administrative order, is authorized and directed to establish a court for veterans in any court in the state, and assign one or more justices or judges to preside therein. Such court for veterans shall have as its purpose the hearing and determination of: (a) criminal cases that are commenced in the court for veterans against a defendant identified as a veteran; and (b) criminal cases that are commenced in other courts of the county, and that are identified as appropriate for disposition by the court for veterans and transferred to the court for veterans as provided in section one hundred seventy-eight-b of this article.

§ 178-b. Transfer of cases to courts for veterans; how effectuated.

(a) Transfer of cases pending in local criminal courts.

1. A local criminal court in a county in which a court for veterans has been established under this article may, upon motion of the defendant and with the consent of the district attorney, cause copies of papers and other documents filed in such local criminal court in connection with a criminal action or proceeding pending therein to be sent to the court for veterans:

(i) upon or after arraignment of the defendant on a local criminal court accusatory instrument by which such action or proceeding was commenced; or
(ii) upon or after commencement of a proceeding brought against a defendant for the violation of a condition of a sentence of probation or a sentence of conditional discharge.

2. Not later than five days following receipt of the papers and other documents, the justice or judge presiding in the court for veterans shall determine whether or not a transfer of the action or proceeding to the court would promote the administration of justice. If the justice or judge presiding in the court determines that it would promote the administration of justice, he or she may order such transfer, in which event the action or proceeding shall be transferred to the court for veterans, all originating papers shall then be sent from the originating court to the court for veterans, and all further proceedings shall be conducted therein. If the justice or judge

determines that a transfer of the action or proceeding would not promote the administration of justice, he or she shall notify the local criminal court or other court from which the reference was received of such determination, whereupon all further proceedings in such action or proceeding shall be conducted in accordance with law.

(b) Transfer of cases pending in superior courts.

1. At any time while a criminal action or proceeding is pending in a superior court in a county in which a court for veterans has been established, including a proceeding brought against a defendant for the violation of a condition of a sentence of probation or a sentence of conditional discharge, a judge or justice of the court in which the action or proceeding is pending may, upon motion of the defendant and with the consent of the district attorney, cause copies of papers and other documents filed in such court in connection with the action or proceeding to be sent to the judge or justice presiding in the court for veterans for review of the appropriateness of the transfer.

2. Not later than five business days following receipt of the papers and other documents, the judge or justice presiding in the court for veterans shall determine whether or not a transfer of the action or proceeding to the court would promote the administration of justice. If such judge or justice determines that transfer would promote the administration of justice:

(i) he or she, if sitting in Supreme Court, may order such transfer, in which event the action or proceeding shall be referred for disposition to the court for veterans, all original papers shall be sent to the court for veterans, and all further proceedings in such action or proceeding shall be conducted therein; or

(ii) he or she, if sitting in county court, shall so notify the justice of the court who caused the papers and other documents to be sent to him or her, and such justice may thereupon order such transfer, in which event the action or proceeding shall be referred for disposition to the court for veterans, all original papers shall be sent from the originating court to the court for veterans, and all further proceedings in such action or proceeding shall be conducted therein. If the judge or justice presiding in the court for veterans determines that a transfer of the action or proceeding would not promote the administration of justice, he or she shall notify the originating court of such determination, whereupon all further proceedings in such action or proceeding shall be conducted in accordance with law.

§ 178-c. Procedure in a court for veterans upon transfer of case thereto. Each action or proceeding transferred to a court for veterans shall be subject to the same substantive and procedural law as would have applied to it had it not been transferred.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

APPENDIX “D”

VETERANS TREATMENT COURT MENTOR PROGRAM HANDBOOK

Honorable Jonathan Lippman
Chief Judge

Honorable Gail A. Prudenti
Chief Administrative Judge

Honorable Judy Harris Kluger
Chief of Policy and Planning

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Introduction from Hon. Judy Harris Kluger

Veterans Treatment Courts in New York State are designed to address the needs of servicemen and women struggling with the psychological and emotional aftershocks of their deployment. These men and women, whose involvement with the criminal justice system is often caused by underlying, service related, substance abuse and mental health issues, present a unique challenge to the courts. The New York State Unified Court System has responded to this challenge with the creation of Veterans Treatment Courts. The goal of these courts is to address these underlying issues and link veterans to the services and support they need. The Veterans Treatment Courts strike a balance between upholding the rule of law and providing treatment services to these men and women to whom society owes a debt of gratitude.

The first Veterans Treatment Court in New York, established in Buffalo in 2008, was an outgrowth of New York's other problem-solving court models, particularly the drug treatment courts and the mental health courts. These courts provide participants with judicial supervision, therapeutic programs and services to address their specific needs while holding them accountable for their actions.

The distinctive elements, and the key to the success of the Veterans Treatment Court model, are the role of the veteran mentors and the collaboration with the US Department of Veterans Affairs and other veteran service agencies. Veteran mentors, comprised of volunteers from the United States Armed Forces share a vast array of common life experiences with participants. These common elements allows veteran mentors to: effectively engage participants, act as a resource and guide to navigating the courts, help participants maintain focus on their treatment, assist in navigating the challenges of adjusting to a healthy and productive civilian lifestyle, and finally successfully graduating from Veterans Treatment Court. Their contribution to the Veterans Treatment Courts is immeasurable.

This handbook, the product of a collaboration with the New York State Bar Association, is designed to assist Veterans Treatment Courts in New York State in building stronger mentor programs. All Veterans Treatment Courts, whether operational or in the planning phase, will benefit from the information contained in this document. I hope you find this handbook to be a useful tool as you operate or implement a Veterans Treatment Court within your jurisdiction, and that it assists you in providing the mentor program that our veterans deserve.

Acknowledgments

We would like to recognize the important efforts of the New York State Bar Association's President, Vincent E. Doyle, III. Addressing the needs of veterans in New York, he convened the Special Committee on Veterans Legal Services. The Committee's mission is to address and meet the needs of New York's community of veterans for quality legal services. The Committee is co-chaired by Karen Hennigan from the United States Attorney's Office for the Eastern District of New York and Michael C. Lancer from the law firm of Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC.

The following individuals provided invaluable guidance and assistance in the creation of this document: Honorable Michael J. Brennan, Honorable Marcia P. Hirsch, Honorable Robert Russell, Elizabeth Burek, Patrick Clayton, Edward Gialella, Herbert Hardwick, Maritza Karagiorgos, Joe Madonia, Jack O'Connor, Rosemary Walker and Michael Young.

Some of the content in this handbook was adopted from the Buffalo Veterans Court Mentoring Program Policy and Procedure Manual, the Suffolk County Veterans Policy and Procedure Manual and the Queens Veterans Court Participant's Handbook.

Finally, I wish to extend my gratitude to Nicholas Cade and Robert Fantone, students at Brooklyn Law School, who assisted in the development of this handbook.

We often take for granted the very things that most deserve our gratitude.

Cynthia Ozick, American-Jewish short story writer, novelist and essayist.

Why Veterans Treatment Courts?

Many veterans return from military service and find themselves facing unique personal challenges, including mental health problems or substance abuse, that they would not have faced but for their military service. Criminal behavior, mental health problems and substance abuse often stem directly from service in combat zones and may be amplified by reentry into home life.[+]

A key finding of a RAND 2008 study identified that nearly 20% of soldiers involved in the wars in Iraq and Afghanistan have a current mental health condition. Nearly 20% of service members reported having experienced a probable Traumatic Brain Injury.

Some veterans may face additional obstacles. Female veterans may have experienced military sexual trauma and the challenges that come from leaving children at home during deployment. Gay and lesbian veterans may struggle with ongoing stigma and prejudice.

Veterans Treatment Courts

Realizing that veterans have special needs that were not being adequately served, Buffalo City Court created the first Veterans Treatment Court in 2008. Beginning with, and then adapting, the structures of drug treatment courts and mental health courts, the Buffalo Veterans Treatment Court identified some of the specific issues facing veterans:

- The needs of many veterans are related to their military service.
- Many veterans use drugs as a way of numbing or decreasing their stress levels.
- Some illegal drug use may stem from the medicinal effect those drugs had on PTSD symptoms and other conditions while in the field.

Veterans Treatment Courts (known as Veterans Court or Veterans Track in some jurisdictions) address these challenges in a forum that is conducive to veterans' rehabilitation. Where available, Veterans Treatment Courts work with civilian healthcare providers, local veterans agencies, New York State Division of Veteran Affairs and the United States Department of Veteran Affairs. They utilize veteran mentors and mental health specialists to complement probation services; and incorporate a therapeutic approach to afford veterans opportunities to transition into civilian life and regain stability.

[+] William H. McMichael, *The Battle on the Home Front*, ABA JOURNAL, Nov. 2011.

Key Components of Veterans Treatment Courts

Veterans Treatment Courts operate similarly to drug treatment and mental health courts. Drug treatment courts operate within the guidelines of the Ten Key Components of Drug Court, developed by a commission of drug court practitioners in 1995. Veterans Treatment Courts feature the following 10 key operational standards which are adapted from the Ten Key Components.

Veterans Treatment Courts:

1. integrate alcohol, drug treatment and mental health services with justice system case processing
2. use a non-adversarial approach where prosecution and defense counsel promote public safety while protecting veteran participants' due process rights
3. identify eligible participants early and promptly place them in the Veterans Treatment Court program
4. provide access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services
5. monitor abstinence through frequent alcohol and other drug testing
6. respond to veteran participants' compliance through a coordinated strategy
7. maintain essential, ongoing judicial interaction with each veteran
8. measure achievement of program goals and gauge program effectiveness through monitoring and ongoing evaluation
9. continue interdisciplinary education and promote effective Veterans Treatment Court planning, implementation and operations
10. forge partnerships among Veterans Treatment Court, Veterans Administration, public agencies and community-based organizations, generate local support and enhance Veterans Treatment Courts effectiveness

Mentor Component

An essential component of the Veterans Treatment Court program is the mentor program where veteran mentors act as peer support to veteran participants. Veterans are better served by having a support system that includes veterans who understand combat experience and the different aspects of military service. Mentors participate in a supportive relationship with participants to increase the likelihood that they will remain in treatment, attain and manage sobriety, maintain law-abiding behavior and successfully readjust to civilian life.

The mentor program consists of mentor coordinators and veteran mentors. Their roles, responsibilities, requirements and qualifications are discussed in the following sections.

Mentor Coordinators

Role of Mentor Coordinators

Mentor coordinators ensure the efficient and successful operation of the mentor program in a Veterans Treatment Court. Mentor coordinators are volunteers that are responsible for assigning veteran mentors to participants, supporting veteran mentors in all aspects of their work and managing mentor training programs and mentor assignments.

Mentor coordinators must be familiar with their local Veterans Treatment Court and veteran services. Mentor coordinators are not required to be veterans, though prior military service is preferable.

Mentor coordinators should:

1. Find appropriate mentors for the Veterans Treatment Court program.
    - This may require conducting presentations in the community regarding the Veterans Treatment Court.
    - Mentors cannot be active employees of the Unified Court System, active law enforcement or a member of any other organization that may present a conflict with the mentor program*. Consult with the judge if there are questions about the eligibility of a veteran mentor.*

2. Match mentors with participants based on shared qualities and backgrounds to the greatest extent possible. Factors to consider may include:
    - branch of service
    - type of service (i.e., combat and location of service)
    - gender
    - general age group

3. Schedule the appropriate number of mentors needed for each court session.
    - Mentors should be present whenever Veterans Treatment Court is in session to provide immediate support for participants appearing in court.

4. Act as a resource for the mentors by:
    - accommodating conflicts in a veteran mentor's personal schedule
    - collecting and reviewing mentor logs, completed by mentors, to monitor the nature of a participant's progress in the Veterans Treatment Court
    - placing mentors in touch with local Accredited Service Officers who can help appropriate veterans secure benefits from the U.S. Department of Veterans Affairs - these trained officers can be found in local government offices and in local service organizations, such as The American Legion,

The Military Order of the Purple Heart and Vietnam Veterans of America

5. Work with the Veterans Treatment Court staff to resolve issues and motivate participants through challenges.
    - In some instances, mentors may bring concerns regarding a participant to the attention of their mentor coordinator. The mentor coordinator is then responsible for contacting the Veterans Treatment Court in a timely manner to ensure that the participant receives appropriate support.
    - If the mentor coordinator determines that mentors are not adequately fulfilling their responsibilities, the coordinator must contact the Veterans Treatment Court staff in a reasonable and timely manner and remove the mentors from the program.

6. Maintain federal confidentiality standards.

7. Attend clinical and legal training programs supported or provided by the Veterans Treatment Court.

8. Maintain access to the mentor logbook or case management notes.

Responsibilities of Mentor Coordinators

The following responsibilities should be carried out by mentor coordinators:

- recruit, screen and train new veteran mentors
- collect and review mentor application forms
- ensure that mentors attend ongoing training programs
- pair mentors with participants
- inform mentors of their schedules
- manage the rotational schedule of mentors in Veterans Treatment Court
- provide mentors with a list of veteran resources
- collect and review mentor logs (where appropriate)
- be prepared to contact the appropriate authorities if participants require crisis intervention, increased court supervision or immediate emergency care
- remove mentors who fail to adequately meet their responsibilities from the mentor program
- perform any additional duties as directed by the judge of the Veterans Treatment Court or the court staff
- identify appropriate veterans services in the community
- update the local veterans resource guide
- maintain confidentiality
- attend appropriate training programs

Requirements and Qualifications for Mentor Coordinators

Mentor Coordinators should:

- be familiar with the Veterans Treatment Court
- have strong leadership and organizational skills
- respect individual differences
- be able to devote time to the Veterans Treatment Court
- have prior military service (preferred, but not required).

Veteran Mentors

Role of Veteran Mentors

Veteran mentors are veteran volunteers responsible for serving as a supporter, guide and confidant for veteran participants. Mentors should provide support as participants' progress through the Veterans Treatment Court and should feel comfortable working collaboratively to assist participants, and, where appropriate, their families, in successfully completing the directives of the court.

Veteran mentors should:

1. Meet with participants to assist in resolving their issues.
   - Each meeting should build on the participants' previous conversations
   - Meetings should be conducted in person (where possible)
   - Refer participants to appropriate services
   - Facilitate an understanding of courtroom procedures

2. Work collaboratively with the other mentors and the mentor coordinator.

3. Motivate participants utilizing a strengths-based approach by:
   - providing encouragement to participants by highlighting their strengths, including, talents, skills and knowledge
   - focusing on what has been successful
   - believing that participants have the potential to learn, grow and change

4. Maintain federal confidentiality standards.

5. Attend clinical and legal training programs supported or provided by the Veterans Treatment Court.
   - Mentors should attend an initial training session where topics may include Veterans Treatment Court's policies and procedures, mentoring dos and don'ts, psychopharmacology, mental illness, Post Traumatic Stress Disorder and Traumatic Brain Injury.

6. Communicate with their mentor coordinator to resolve any issues regarding time commitments, resistant participants or unmanageable challenges.
   - If a mentor fears for the safety of a participant or is concerned about a participant's behavior, the mentor should report any concerns to their mentor coordinator immediately.

7. Update the mentor logbook or case management notes after speaking with a participant.

8. Commit to a period of time, usually 5 to 6 months, to mentor in the Veterans Treatment Court.

9. Provide a valid military service record (DD214 or DD215) and, if necessary, submit to background verification.

Responsibilities of Veteran Mentors

The following responsibilities should be carried out by veteran mentors:

- attend relevant training programs
- communicate with the mentor coordinator regarding any issues
- update the mentor logs or case management notes
- maintain confidentiality
- maintain appropriate boundaries with participants
- be respectful and always speak with a positive tone

While meeting with participants, mentors must NOT:

- make clinical recommendations
- give legal advice
- provide psychotherapy
- utilize a stern approach
- inappropriately extend the boundaries of their relationship

Requirements and Qualifications for Veteran Mentors

Mentors should:

- complete a mentor application form (sample is attached)
- provide a valid DD214 or DD215 (honorable discharge is preferred)
- submit to a background check, if requested
- be respectful of individual differences and maintain appropriate boundaries with participants
- not be an active employee of the Unified Court System, an active member of law enforcement or a member of any other organization that may present a conflict of interest with the mentor program
- commit to a time period of 5 to 6 months

Sample Veterans Treatment Court Mentor Application

Date: _____

Last Name: _____ First Name: _____

Address: _____

_____

E-mail: _____

Phone 1: _____ **O** Home **O** Work **O** Cell

Phone 2: _____ **O** Home **O** Work **O** Cell

Branch of Military Service: _____ Length of Service: _____

Type of Discharge: _____

Employer: _____ Position: _____

Please circle the days you are available to mentor: M T W TH F

Time Available: _____

Do you speak a language other than English? **O** Yes **O** No

If yes, list languages: _____

Have you previously served as a mentor? **O** Yes **O** No

If yes, in what capacity and where? _____

_____

Are you willing to submit to a background investigation? **O** Yes **O** No

Are you willing to submit to a drug and alcohol test? **O** Yes **O** No

How did you learn about the Mentor Program? _____

What does being a mentor mean to you? _____

_____

_____

What skills and experiences do you bring to the mentoring program that will be helpful to the veterans in the program and the other mentors?

_____

_____

_____

What are you hoping to take away from volunteering with the Veterans Treatment Court mentoring program?

_____

_____

_____

Mentors will be expected to participate in court observation, attend ongoing training and be supervised by a mentor coordinator.

Frequently Asked Questions

The Office of Policy and Planning serves as the technical assistance arm of the Unified Court System for problem-solving courts. The following are frequently asked questions regarding veteran mentor programs.

Q: How many mentors will I need to start a mentor program?
A: The number of mentors needed in a Veterans Treatment Court will vary based on the court's caseload. To start a mentor program, it is helpful to have a diverse group of mentors available. At a minimum and if possible, include a combat veteran, a female veteran and an Accredited Service Officer to navigate the U.S. Department of Veterans Affairs and assist in processing veterans' claims.

Q: Where can mentor coordinators solicit veterans to volunteer in the Veterans Treatment Court?
A: Mentor coordinators should utilize local veteran groups such as local Vet Centers which are community-based veteran centers and are operated by the U.S. Department of Veterans Affairs. They provide counseling services to veterans and their families, focusing on post-war readjustment to civilian life. Mentor coordinators may also contact the Disabled American Veterans Chapters which are non-profit organizations providing assistance to disabled veterans. Also, VA Medical Centers have veterans experienced with Post Traumatic Stress Disorder.

Q: How often are mentors required to meet with participants?
A: Once a week is recommended, but mentors must understand that every participant is different. The goal is to form a supportive relationship with their participant.

Q: Can mentors be effective without much knowledge of the law or courtroom proceedings?
A: Mentors do not need to have legal or criminal justice experience. In fact, mentors must not provide legal advice.

Q: Should mentors use a "tough love" approach?
A: Although a mentor may believe it will better help a participant, this approach is counter-productive to a participant's recovery. A strengths-based approach that encourages and motivates participants is preferable.

Q: Can attorneys serve as veteran mentors?
A: Attorneys who appear in Veterans Treatment Court should not become mentors. Attorneys, who do not represent litigants in Veterans Treatment Court, can be mentors, but they must not provide legal advice to participants.

Q: Why can't Unified Court System employees be mentors?
A: Unified Court System employees must avoid the appearance of impropriety. Court employees face a conflict of interest in serving as impartial mentors.

Q: Can the Veterans Treatment Court mandate participants to meet with veteran mentors?
A: Initially, many participants will show little or no interest in the mentor program. Once participants feel comfortable and trustworthy of the Veterans Treatment Court, they usually commence meeting with mentors. The mentor program should be encouraged and not mandated.

Q: Can the mentor coordinator keep his or her case management notes with court files?
A: Files from the mentor program should be maintained separately from court files.

Q: Does the Unified Court System provide training programs for courts interested in planning a Veterans Treatment Court or enhance an existing mentoring program?
A: The Office of Policy and Planning works with the district offices and local courts to provide training programs on various veteran and non veteran related topics, statewide.