

A New Era



NATIONAL
LEGAL AID &
DEFENDER
ASSOCIATION

Volume 30, No. 3
JANUARY-APRIL 2009

for

Equal Justice?

Fresh hope has emerged in the struggle to provide fair and equal legal representation to low-income communities.

See pages 1-3

Inside:

- | Message to Members
- | 2 Meaningful Web Access for LEP Clients
- | 4 Helping Clients with a Military Connection
- | 4 Powerful Potential of Multidisciplinary Team Advocacy for At-Risk Youth
- | 6 Supreme Court Watch
- | 6 How Defenders Can Secure Racial Justice Policy Reform
- | 8 Overcoming Sovereign Immunity Defenses in ADA, Rehabilitation Cases

Helping Clients with a Military Connection

By Steve Lynch

Increased reliance on National Guard and Reserve personnel for military operations in Iraq, Afghanistan and elsewhere around the world means that many clients seeking assistance from legal aid offices have some connection to the military. This is more than just a curiosity, because the “connection” may trigger significant protections under federal and state law, or entitle clients to free services from the Department of Veteran Affairs (VA), the Department of Defense (DoD) or other sources.¹

Not everyone with a military connection qualifies for these protections or services, so it is incumbent upon legal aid practitioners to (1) recognize the distinctions between various military-related categories and properly screen for them, and (2) inventory and understand the specialized services and legal protections available to clients in each category.

Someone with a military connection might fall into one or more of the following categories:

- **Active Duty** — Now serving full-time in the Army, Air Force, Navy, Marines or Coast Guard
- **Reserves** — Now serving in some capacity with the Reserve component of the Army, Air Force, Navy, Marines or Coast Guard
- **National Guard** — Now serving in some capacity with the National Guard of a particular state
- **Military Retiree** — Retired from active duty, the Reserves or National Guard (often referred to as a “military retiree”)
- **Dependent** — A family member of one of the above
- **Former spouse** — A former spouse of an active duty, reserve or National Guard member
- **Veteran** — Once served on active duty, in the reserves or National Guard. Could also qualify as a “military retiree”

These and other distinctions have a



direct bearing on what type of special services or legal protections, if any, extend to a particular client.

For example, military veterans and retirees who have a service-connected disability may be entitled to special medical benefits and other services from the VA – which operates hospitals and clinics at many locations around the country. Those without a disability may not qualify. Note that certain “military” clients will be entitled to services from the VA alone, some from DoD alone, some from both and some from neither. At the same time, a veteran denied help by the VA and DoD, may still be able to obtain assistance from a local veteran service organization (VSO).²

One way to clarify a client’s military “connection” is to ask for his or her: (1) military identification card; (2) military orders; or (3) DD Form 214. Every active duty, reserve and National Guard member will have a military ID card; as will every military retiree and military dependent.³ Personnel currently serving on active duty or those being activated should possess written orders that identify their unit, and period of deployment - which may prove helpful in tracking down non-supportive parents or spouses. Veterans should possess a DD Form 214, Certificate of Release or Discharge from Active Duty, which provides important information about their period of service and type of discharge.

Once a client’s military status is established, the next step is to determine what special protections or services are applicable. A new clearinghouse website at www.nationalresourcedirectory.com categorizes many of those benefits by subject area and provides links to local

resources that may be helpful. Other useful sites have been organized by military, VA and VSO representatives at the federal, state and local levels,⁴ as well as the ABA Standing Committee on Legal Assistance to Military Personnel⁵ [LAMP]. Many state bar associations also have a special section focused on the needs of individuals with a military connection. Some examples are briefly discussed below.

Military personnel and their dependents may qualify for special legal protections under the Servicemembers Civil Relief Act (SCRA).⁶ Protections include:

- Obtaining a stay of at least 90 days prior to final judgment in a civil matter
- Reopening default judgments up to 60 days after release from active duty
- Vacation or stay of an attachment or garnishment of property, money or debts
- Restructuring of contracts based on equity and capping interest rates at 6 percent
- Tolling of statute of limitations during military service

Personnel typically must be able to show that military service impaired their ability to defend or represent themselves. Many states have similar statutory protection.

Other key federal statutes include the Uniformed Services Employment and Reemployment Rights Act (USERRA),⁷ and

See MILITARY on page 31



SERVING JUSTICE ACROSS THE NATION®
800.550.JFCU | jfcu.org

during the attorney-client interview, including identifying and addressing particular psychological or emotional issues the client may have which may otherwise adversely impact the attorney/client relationship and undermine the attorney's ability to provide effective representation.

- Obtaining, reviewing and summarizing medical, psychiatric, education, employment and other relevant records.
- Serving as a liaison for communication between the defense counsel and the client's family members, service providers and relevant others.
- Educating judges, prosecutors, probation officers and others regarding mitigating factors that may have influenced a client's involvement in the criminal justice system, e.g. the impact of untreated mental illness on behavior.
- Addressing immediate collateral/logistical concrete needs such as transporting clients to and from treatment programs, arranging for dedicated phone line GPS monitoring bracelets for clients as a condition of release, and obtaining appropriate client clothing for trial proceedings.

MILITARY - Continued from page 5

the Uniform Services Former Spouses' Protection Act (USFSPA).⁸ USERRA provides reinstatement rights for persons who held a civilian job prior to entering active duty. USFSPA provides special rules for continued access to military services (such as medical care and the commissary) and distribution of military retirement to ex-spouses of career military personnel.⁹

Free legal services for [these categories of military service] may be available from legal offices at large military installations. Military attorneys can prepare wills and powers of attorney, help in resolving landlord-tenant and consumer disputes, assert protections under the Servicemembers Civil Relief Act, and assist with obtaining spousal or child support through the chain of command. Services typically are offered only to active duty and retired personnel (and dependents), with priority given to junior enlisted personnel about to deploy.¹⁰ These services normally do not include in-court representation or help with claims brought against the government. Veterans are not eligible for these services.

However, many states with a significant population of those with military connections do not contain a large military installation. Even in these communities, however, there are some specialized resources available. Members of the National Guard and, to a lesser extent, the Army Reserve are eligible for free legal assistance from local Judge Advocate General (JAG) officers, many of whom combine part-time JAG duties with other aspects of their private practice. Because of resource limitations, their legal assistance is typically limited to those issues directly related to deployment (e.g., wills, child custody, etc.), although their expertise may be far broader. Each state National Guard has at least one full-time JAG officer attached to their headquarters office, and that person may be able to offer technical advice and referral resources for legal aid attorneys who are helping eligible clients with civil issues that could be affected by these special legal protections. Other support may be available from local private attorneys who are participating in the ABA LAMP

- Providing crisis intervention related to psychological issues, such as client's suicidal thoughts, as well as emergency needs, such as food and shelter. This includes addressing issues that may arise during a client's pretrial incarceration, such as the need for medical treatment.

Experience from the field and results from attorney and client surveys indicate that the collaborative use of social workers in the defense of criminal cases has increased the potential of a more favorable legal outcome for the client. Many attorneys have stated that social work intervention has been crucial in providing an alternative to jail. Furthermore, the inclusion of a social worker as a member of the client's defense team can benefit the lawyer-client relationship, facilitating more effective interviewing and increasing client cooperation. ★

Norma Wassel is the director of the Social Services Advocates Program, Public Defender Division, Committee for Public Counsel Services, Commonwealth of Massachusetts.

Project.¹¹

In sum, legal aid practitioners need to be aware of the special legal protections and services available to many clients with a "military" connection. It is important to screen for these connections as part of client in-take, and to network with military and VA specialists to ensure that practitioners fully utilize these resources. ★

Steve Lynch is a military legal assistance attorney for the Ninth Coast Guard District, which encompasses the Great Lakes. Based in Cleveland, he received the ABA Distinguished Service Award for legal assistance to military personnel in 2003. The views expressed herein are his own.

1 Such as the American Legion, Veterans of Foreign Wars (VFW), Disabled American Veterans (DAV) or other veteran-focused organizations often referred to as Veteran Service Organizations (VSO).

2 In most States, an individual seeking these benefits can access free help (regardless of income) from either a State-funded veterans agency or through a membership-based VSO. A good starting point is with the list of state and local resources at <https://www.nationalresourcedirectory.org/>

3 For a variety of reasons, not all dependents who are entitled to a military dependent identification card will have one in their possession. In some cases, the military member deploys before he or she is able to get cards for family members. In other cases, military members are unaware of or fail to advise family members of this entitlement. Possession of the card is critical because it is the basis for dependents receiving medical, legal and other free services.

4 Other good web-based sources include www.militaryonesource.com and <http://legalassistance.law.af.mil/>

5 See: www.abanet.org/legalservices/lamp

6 50 U.S.C. App. §§501 et seq. Formerly known as the "Soldiers and Sailors Civil Relief Act" until its revision and renaming in December of 2003.

7 38 U.S.C. §§4301 et seq.

8 10 U.S.C. §1408

9 The most comprehensive source of guidance on the topic of military family law is *The Military Divorce Handbook* by Mark Sullivan. Published by the ABA, it contains more than 600 pages of detailed information and includes as CD with sample forms.

10 A military legal assistance locator is available here: <http://legalassistance.law.af.mil/content/locator.php>

11 A list of organizations participating in this project by state is available at <http://www.abanet.org/legalservices/helpreservists/lampdirectory.html>