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**TESTIMONY BEFORE THE NEW YORK STATE ASSEMBLY'S JOINT STANDING
COMMITTEE ON VETERANS AFFAIRS, STANDING COMMITTEE ON LOCAL
GOVERNMENTS, STANDING COMMITTEE ON CITIES,
AND SUBCOMMITTEE ON WOMEN VETERANS**

DELIVERY OF VETERANS' SERVICES AND PROGRAMS IN NEW YORK

October 17, 2019

Good morning, my name is Kent Eiler and I'm the Project Director of the City Bar Justice Center's Veterans Assistance Project. I also presently serve as a member of the Disability Law Committee of the New York City Bar Association and am an adjunct member of the City Bar's Social Welfare Committee. Previously, for the last four years, I served as a member of the City Bar's Military Affairs and Justice Committee. Since being confirmed by the New York State Senate in June of last year, I have served on the State's Veterans Services Commission which is tasked with assisting the director of New York's Division of Veterans Services in the formulation of policies affecting New York's veterans. In addition I also serve as a Major in the United States Air Force Reserve Judge Advocate General's Corps. My testimony here today is in my personal capacity, as a representative of the aforementioned committees of the New York City Bar Association, and does not express the views of any military service, the Department of Defense, or the United States Government.

Earlier this year, in May, the New York City Bar Association, by and through its Military Affairs and Justice Committee, the Disability Law Committee, and the Social Welfare Committee, released a groundbreaking report in which the City Bar voiced "its unequivocal support for the veterans' lawyers and advocates currently assisting disabled and low income veterans and their surviving family members in New York" and "underscore[d] that New York provides too little support to ensure veterans are receiving the federal benefits they need and deserve."¹ The report looked at the data of the U.S. Department of Veterans Affairs ("VA") for New York. Specifically, the VA's National Center for Veterans Analysis and Statistics is mandated by federal law to produce data on a broad range of topics, including, on an annual basis, the amount of the federal agency's expenditures on a state-by-state basis.² Those state summaries can be broken down even

¹ See New York City Bar Association, Report by the Military Affairs and Justice Committee, the Disability Law Committee, and the Social Welfare Committee Concerning Inadequate Financial Support From the City and State of New York for Legal Services to Obtain Benefits from U.S. Department of Veterans Affairs (May 22, 2019), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-the-inadequate-financial-support-for-legal-services-for-veterans-seeking-benefits>.

² See National Center for Veterans Analysis and Statistics <https://www.va.gov/vetdata/> (last visited Oct. 3, 2019).

further by county. The City Bar's report noted some disturbing data for New York State and New York City.

In the VA's FY2017 data, fewer than 17% of New York's veterans statewide (well below the national average) were receiving two relatively common VA benefits received by disabled or low-income veterans. Recently, the director of the State's Division of Veterans Services has publicly commented on the problem of so few veterans and their families getting VA benefits identified by the City Bar's report.³ New York's veterans (the fifth largest state population of veterans in the country) the VA's data notes, were receiving less than \$2.6 billion in VA Compensation & Pension in FY2017.⁴ By contrast, the City Bar's report noted that approximately 25% of California's 1.7 million veterans (the state with the largest veteran population in the country) were receiving these benefits. Other states with large veteran populations, notably Florida and Texas, have 24% and 29% of their veterans, respectively, receiving these important VA benefits. These numbers translate to real economic cost, not just for New York's veterans but for our taxpayers. The City Bar's report noted:

“This is a critical issue for the New York economy because VA Benefits inject federal dollars into the State and City economies and can replace State and City-funded benefits these veterans currently receive- freeing those funds to assist other needy New Yorkers. In Florida, for example, disabled and low-income veterans receive \$6.3 billion in federal VA Benefits each year, compared to a paltry \$2.6 billion in New York. Likewise, California and Texas also receive billions more in VA Benefit dollars than New York.”

The City Bar's report further noted that while the exact percentage of veterans entitled to these benefits is unknown the fact that fewer than 17% of New York's veterans receive these benefits should be, to use the report's phrase “deeply troubling” in light of available data. It is reported that 45% of the 1.6 million Post 9/11 veterans have filed claims for these benefits.⁵ Nationally, 23-24% of all veterans currently receive VA Disability Compensation or the VA Needs-Based Pension.⁶ Moreover, the VA's National Center for Veterans Analysis and Statistics tracks veterans' household income and educational attainment- data which suggests New York's veterans may actually be in greater overall need of these benefits than their comrades in states like California, Florida, and Texas. New York's veterans, overall, had lower income than the national average (for those veterans making less than \$100k annually) and lower educational attainment

³ See “A Conversation with Colonel (Ret.) Jim McDonough, Jr., Director of New York State's Division of Veterans' Services,” NYS Health Foundation, Sept. 24, 2019, <https://nyshealthfoundation.org/event-recap/a-conversation-with-colonel-ret-jim-mcdonough-jr/> (last visited Oct. 14, 2019).

⁴ See New York FY2017 State Summary, https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_New_York.pdf (last visited Oct. 3, 2019).

⁵ See e.g. Marilynn Marchione, *Almost Half of New Veterans Seek Disability Benefits*, Boston Globe, May 28, 2012 <https://www.bostonglobe.com/news/nation/2012/05/27/almost-half-new-veterans-seek-disability-benefits/sYQAAAY00ddXBRoqfsKMheJ/story.html> (last visited Oct. 14, 2019).

⁶ See e.g. New York FY2017 State Summary, *supra* note 3.

(fewer four-year and higher degrees) than their peers in other states.⁷ The City Bar’s report noted with respect to this reality: “If New York veterans actually had fewer service-connected disabilities and no need for a VA Pension, we would expect their income and educational attainments to be higher than the national average, not lower.”⁸

The report doesn’t just identify the problem but identifies how, because of significant changes in federal law over the last thirty years, an increase in what are known as “veterans law” attorneys could help to reduce the gap between New York and other states in a meaningful way. Veterans law attorneys (called “Veterans Benefits” lawyers by some) didn’t exist in a meaningful way prior to 1988. To be sure there were laws Congress passed pertaining to VA Benefits prior to 1988 but the enforcement mechanism for those laws was a challenge to say the least. It was virtually impossible to challenge a VA benefits determination in court. It was in this environment that lasted for most of the 20th century, in which non-attorney benefit advisors flourished. Indeed, even today, in 2019, with the passage of the Veterans Judicial Review Act in 1988 now thirty years old, there is still an important role, the City Bar notes, that non-attorney VA benefit advisors can and should play to assist low-income veterans and their families. The Veterans Law bar is still in its infancy and, even if New York State wanted attorneys to assist most veterans at the initial claim stage, there are simply not enough attorneys familiar with the practice area to assist the thousands of veterans who file claims every year.

Nonetheless, the advent over the last thirty years of precedential, binding decisions on the VA from the U.S. Court of Appeals for Veterans Claims (the nation’s newest and busiest federal court adjudicating over 4,000 appeals from veterans every year) means that the calculus of veterans’ advocacy has changed and it will sometimes be the case that a veteran simply requires the services of an attorney in order to obtain VA benefits to which they are entitled. The City Bar report argues that the state providing funding for VA Accredited attorneys should, over time, be revenue positive:

“Adequate funding by the City and State for legal services will create a pipeline for new Veterans Law attorneys, as well as incentivize the legal academy in general to embrace this practice area and commit to the training of enough lawyers to address the staggering demand. Investing in Veterans Law practitioners should, over time, be revenue positive for the City and State. We anticipate that the City and State will spend far less by funding this Veterans Law initiative than it will save in not doing so, by transferring the costs of caring for disabled, low-income veterans back to the VA.”

⁷ *Id.*

⁸ It is also important to note that veterans are, as a community, as broad and diverse as the nation they at one time served. The City Bar’s report focused on veterans with a service-connected disability and on low-income veterans. While the number of veterans that fit this description is significant, the committees of the City Bar are also mindful that an equally significant percentage of our veterans population neither has service-connected disabilities nor are low-income. To that end it is important to avoid harmful stereotyping of the veterans community that can make it difficult for veterans to successfully reintegrate into civilian society upon completion of their military service. It’s is with those veterans who either have service-connected disabilities or who are low-income that the City Bar’s report is concerned.

The report concludes that the City and State can and should require attorneys receiving funding to demonstrate they “are providing effective representation, including by successfully obtaining increases in monthly disability compensation from the VA, new grants after previous denials of VA Benefits, transfers of persons from State/City dollars to federal dollars, and retroactive awards of benefits for low-income and disabled veterans.”

As this federal administrative practice area grows increasingly complex, without a doubt, lawyers are now integral to veterans in many instances obtaining the benefits they should be receiving from Washington. I echo here today the New York City Bar Association’s call that the City and State of New York step up to fund and incentivize Veterans Law practitioners to provide this important legal work. It would be, as the report said, a “win-win” for both New York’s taxpayers and, more importantly, our veterans. Thank you for your time and attention today. I am happy to answer any questions you may have.