Military and Veterans Affairs Committee

PBA Committee/Section Day
Holiday Inn East—Harrisburg, PA
Thursday, November 21, 2013
9:15 – 10:45 a.m.

Conference call—call 1-877-659-3786/passcode 7040866066#

Welcome/Introductions – Wes Payne and Lynn Costa

President’s Message

Legislative Issues

Wills for Heroes to Include Veterans

Plan for Frank O’Connor’s Presidency

Bankruptcy for Vets and More—Dianna Schwartz, Executive Director, Military Assistance Project

PA Veterans Justice Project Request for Support—Melvin Dill invited

Veterans National Education Program

New Business

MARK YOUR CALENDARS

NEXT COMMITTEE/SECTION DAY
Thursday, May 15, 2014 - Hershey Lodge and Convention Center
In conjunction with the PBA Annual Meeting
COMMITTEE/SECTION DAY
April 11, 2013
Final Report

COMMITTEE: Military and Veterans Affairs Committee

STAFF MEMBER: Gabriele Miller-Wagner

ATTENDEES: See typed attendance sheet

• Major Points Discussed

   A. Resolution to have PTSD added to the mitigating factors for criminal sentencing cases

      1. Background – Wes received a call from Justice McCaffery’s office, the Supreme Court to have this committee spear head a resolution to add it to the current, mitigating factors
      2. Is there anything that says it cannot be added: not specifically listed, only mental health
      3. Committee is interested in working on this resolution
      4. Motion made to have the Committee endorse a resolution to add PTSD to mitigating factors – applies only to the guidelines: Richard G/Richard R/Carried – Richard G to draft resolution

   B. PTSS CLE June 4th

      1. All day CLE, lunch included
      2. John Mundt PhD – Clinical Psychologist (veteran’s mental health issues)
          He is a Clinical Psychologist as well as a professional speaker and trainer, offering a Continuing Legal Education experience for attorneys and judiciary. With more than two million Americans having already returned from deployments to Iraq or Afghanistan, the prevalence of Post-Traumatic Stress Disorder (PTSD), suicide, Traumatic Brain Injury (TBI) and other related problems are all too high in these veterans. Many attorneys and others who work in our legal system are already encountering the new combat veterans as clients, defendants, plaintiffs or witnesses. The need for attorneys, judges and related professionals to understand the impact of veteran's mental health problems has never been greater, since these issues may impact competency, responsibility, violence risk, parenting, and many other factors in a particular criminal or civil case.

          Well suited to train legal professionals on these issues. As a front-line provider of mental health care to military veterans, he has extensive experience with the broad range of mental health problems that can be associated with military service, as well as with treatment and intervention
considerations. In addition to more than twenty years' employment with the Veterans Administration as a psychologist, he is a nationally known speaker who has presented professionally to a wide range of audiences, in more than fifty cities, on the topic of Post-Traumatic Stress Disorder and other mental health problems in the returning veterans from Iraq and Afghanistan. Recent audiences have included the Illinois Bar Association, the Alaska Bar Association, the Drug Enforcement Administration in St. Louis, the Lake County Indiana Sheriff’s Department, the Cook County Veterans Court in Skokie, Illinois, as well as the National Security Administration's Employee Assistance Program. Also a regular trainer on veterans' issues for the Cook County Adult Probation Department in my home city of Chicago. His presentations and seminars have consistently been well-received and highly rated by participants, and he can provide references and recommendations in this regard.

3. Locations – Pitt/Phila/Hbg

4. Wes will make calls to Justice McCaffery and Justice Castille to see if one of them could and would be interested in doing a video intro for the speaker (David’s suggestion)

C. Pro Bono Conference – May 14th

1. All day CLE includes lunch
2. Living from Phila in the AM then Mechanicsburg in the PM

D. Qualifications and re-qualifying CLE

1. September 20th
2. Requirement/refresher must be taken every 3 yrs

E. Frank O’Connor’s pro bono imitative to have everyone in the PBA help a veteran during his year as PBA President. Frank to do a statement about his initiative his year as President.

1. Gabriele will create form for attorneys to return to her to track for his initiative

F. Medal of Honor license plate resolution

1. How many Medal of Honor winners do we have in PA? (4?)
2. Congressional Medal of Honor doesn’t exist
3. Could we pay for the plates for the 1st year if only 4?
   a. Wes will check the budget
   b. Are there any policy issues
   c. Wes will check to see how many there are in PA

G. Statewide access to justice hearings

1. Does anyone have anyone that would want to appear at the hearings to give testimony on how legal services helped them and what would have happened to their situation if they didn’t have legal services to help them? Contact David with information.
H. Wills for Heroes for veterans

1. Concerns
   a. Takes business away from solo/small firms
   b. Income limits
2. Tom Reed gave Widener’s criteria when they do these clinics
   a. Disabled 30% or greater
   b. 200% of poverty level
3. Jeannine brought up that a lot of veterans have minor children so they need Wills and Estate Planning documents
4. Thoughts of the committee
   a. Good idea
   b. Create criteria (limitations)

I. ACBA Military Spouses Resolution (2nd review)

1. Does this include full or limited admission to the State Bar?
2. What requirements are needed to practice? (individual States name their requirements)
3. The Commonwealth of PA is required to make sure that the minimum competency standards are met by attorneys practicing, ie competency issues?
4. How do the insurance carriers for our State feel about this resolution?
5. Send feedback to Wes, David and Gabriele
6. Rule 204

- **Action Items:** Medal of Honor plate questions.
- **Recommendations & Resolutions to the Board of Governors & House of Delegates**
  A. Medal of Honor License Plate Resolution

Please attach any additional information and any meeting handouts to this report, as well as the original of the attendance sheet which has been signed by all attendees.
Military Assistance Project

When bankruptcy becomes necessary, Military Assistance Project provides servicemen and servicewomen with attorneys and legal resources to enable them to obtain a fresh start.

★ Our pro bono services are designed to counsel, to aid and to represent military personnel in need of legal assistance pertaining to bankruptcy.

★ MAP attorneys and paralegals are available to assist veterans and active duty reservists with serious financial concerns.

Military Assistance Project
One Commerce Square
200 S Market Street, Suite 1930
Philadelphia, PA 19103

www.militaryassistanceproject.org
MILITARY ASSISTANCE PROJECT

The Military Assistance Project was established to provide free legal services for active duty, reserve, or veteran military personnel in the form of pro bono bankruptcy services. Our program creates partnerships between Military personnel, pro bono Attorneys, and Partners in Philanthropy who provide funding for our organization. When bankruptcy becomes necessary, Military Assistance Project provides servicemen and servicewomen with attorneys and legal resources to enable them to obtain a fresh start.

MILITARY

Countrywide, people are finding themselves negatively affected by the current US economic crisis. Military Assistance Project recognizes that military families are in particular need of help. Military personnel often face additional financial stress due to deployment or from their years of service. MAP was created expressly to help servicemen and servicewomen who have undergone financial distress with creditor-related issues.

Bankruptcy is not an option to be considered lightly, but asking for help does not have to be an added stress. MAP attorneys and paralegals will be able to answer questions about whether filing for bankruptcy is the right next step or not.

ATTORNEYS

Attorneys and paralegals make the Military Assistance Project possible by providing their services to the men and women who have served our country. Reintroducing a veteran into the current tumultuous US economy often leads to financial distress, and attorneys and paralegals with a background or interest in consumer law and bankruptcy are uniquely equipped to relieve that pressure.

Partnering with Military Assistance Project is a chance to help change the world by helping one person at a time. MAP relies on, and is extremely grateful for, the generosity of these legal professionals as we work to alleviate the financial burden of our United States veterans.

PHILANTHROPIC

Philanthropic partners enable our organization to exist and they provide the framework through which we are able to offer our services to military personnel in need. Partnering with Military Assistance Project means giving back to the men and women who gave so freely of themselves.

Gifts such as a one time donation, a recurring gift, or even a rollover from an IRA enable the Military Assistance Project to serve its countrymen and countrywomen as they once served us.

Contact us via our website at militaryassistanceproject.org, and our development team can review gift options.
Pennsylvania Veterans Justice Project
Melvin Dill, director
12 West 8th Street, Chester, PA 19013
484-483-8304; 484-350-6945

Dear Staff Members,

We are a grass-root project that advocates for veterans incarcerated. Would your organization oppose to any legislative reform for veterans who are disabled, aging, and suffering with PTSD (post-traumatic stress disorder)? We are aware of the mitigating circumstances such as PTSD which caused these veterans to inflict harm on their community. We desire to educate and advocate about treatment rather than harsh punishments for these veterans who fought for their country with pride. We now have Veterans Courts for veterans who violate the laws of their community. These courts have sentenced these veterans to treatment programs rather than harsh punishments. In conclusion, we hope that your organization/office can find reason to believe that treatment for these veterans works best for public safety.

Sincerely,

Melvin Dill-Director

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Groups listed for affiliation purposes only

A coalition of concerned citizens working with Pennsylvania's incarcerated veterans
Yesterday, we celebrated Veterans Day commemorating the service of 21.2 million men and women throughout the United States who served in our armed forces. Of those, some are wounded from recent wars in Afghanistan and Iraq, some are still suffering from the long term effects of prior conflicts in Korea, Vietnam and World War II. Others, although not injured are entitled to benefits from their years of service and many are not aware what those benefits might be.

The list and types of benefits are extensive and there are very specific criteria for each. However, for those who would like to explore the overall, there needs to be a beginning point and this column at least hopes to provide that.

The U.S. Department of Veterans Affairs has an online booklet that can be accessed by going to www.va.gov, then clicking Veterans Services, then Inside Veterans Services, and then Benefits Booklet. There is a 71 page 2013 On-Line Edition of the booklet that can be downloaded on-line.
Here are some of the subjects covered which will give you an idea of how extensive this field is: health care benefits, service-connected disabilities, vocational rehabilitation and employment, pensions, education and training, home loan guaranty, VA life insurance, burial and memorial benefits, reserve and national guard, special groups of veterans, transition assistance, dependents and survivors health care, dependents and survivors benefits, military medals and records, benefits provided by other federal agencies, and VA facilities.

In addition to the federal information, readers might be interested in searching www.military.com. Although this site has an immense amount of information about virtually every veterans government benefit nationally, it also gives access to information specific to Pennsylvania or any other state. Those interested should go to www.military.com, then click “benefits,” then “veteran benefits,” then “state veteran’s benefits,” then Pennsylvania or whatever state they wish to search.

Some of Pennsylvania’s benefits such as tax exemption from real estate taxes require 100% service connected disability.

As to health care, most people are familiar with the Pennsylvania’s State Veterans Homes which are available to veterans and spouses and surviving spouse of eligible veterans who were released under honorable
conditions. One such Home is located in Chester County at Spring City. Pennsylvania residency is required.

Chester County is also, of course, home to the Coatesville VA Medical Center which has been an invaluable resource to the community for many years. Coatesville VA’s website reports that the hospital provided health care to 18,558 Veterans and had 200,702 outpatient visits in 2012 including 1,263 Iraq and Afghanistan War Veterans and 871 women Veterans served. Many local Chester Countians first become acquainted with VA services through the Coatesville facility including benefits for prescription drugs. There are also benefits for homeless veterans and returning service members.

Healthcare benefits include Tricare for those under age 65 and not on Medicare, and Tricare for Life for those 65 and over and for those under age 65 on Medicare. Tricare for Life acts as a supplemental insurance to Medicare (and to private employer sponsored plans) and requires enrollment in Medicare “B.” Since VA providers cannot bill Medicare and Medicare cannot pay for services received from VA, it is important to differentiate the payment source before receiving services either from private sources or VA. More details are contained in the Tricare for Life section under www.military.com.
One subject I have addressed in the past, Aid and Attendance is a significant monthly benefit used primarily but not exclusively in personal care homes (previously known as assisted living in Pennsylvania). Aid and Attendance does not require service connected disability but it does require service during wartime with 90 days or more of active duty, 1 day beginning or ending in a period of war, and that the claimant have received an honorable discharge. The claimant veteran must require the “aid and attendance” of another (non-family member) to assist him in his daily life. The benefit is also available to widows and widowers of qualified veterans. Over and above the Aid and Attendance benefit, the VA system has some respite, hospice, and at-home care.

I might note proudly that my sister, Joanne, is a nurse at the new VA Medical Facility in Las Vegas, Nevada.

To enter the VA health care system, you can submit an application for enrollment (VA Form 1010EZ) online at www.1010ez.med.va.gov/sec/vha/1010ez/.

For more, listen to radio WCHE 1520 “Planning Ahead” with Janet Colliton, Colliton Law Associates, and Phil McFadden, Home Instead Senior Care, on Wednesdays at its new time 4:00 pm to 4:45 pm.

Janet Colliton, Colliton Law Associates, PC, limits her practice to elder law, life care and special needs planning, Medicaid, estate planning.
and administration and guardianships and is located at 790 East Market St., Ste. 250, West Chester, PA 19382, 610-436-6674, colliton@collitonlaw.com. She is also, with Jeffrey Jones, CSA, co-founder of Life Transition Services, LLC, a service for families with long term care needs.
Chapter 40

APPEALS ARISING UNDER THE PENNSYLVANIA CODE OF MILITARY JUSTICE

Rule 4001. Scope of Chapter

This Chapter shall apply to all appeals from a court-martial as permitted by the Pennsylvania Code of Military Justice, 51 Pa.C.S. § 5100 et seq. The other chapters of the Pennsylvania Rules of Appellate Procedure shall also be applicable, provided such application is not inconsistent with the Pennsylvania Code of Military Justice or preempted by the rules contained in this Chapter.

Official Note: The Pennsylvania Code of Military Justice ("Code"), 51 Pa.C.S. § 5100 et seq., provides for a right of appeal to the Superior Court from certain final judgments of courts-martial and specific interlocutory orders or rulings. This right of appeal under the Code is applicable only to proceedings involving "state military forces" or members of the Pennsylvania National Guard not in a status subjecting them to the exclusive jurisdiction of the United States.

Rule 4002. Manner of Taking Appeal

An appeal shall be taken by filing, in person or by first class, express, or priority United States Postal Service mail, a notice of appeal with the State Judge Advocate for the respective branch of service in which the court-martial has been convened.

If the notice of appeal is filed by first class, express, or priority United States Postal Service mail, the notice shall be deemed received by the State Judge Advocate for the purposes of filing on the date deposited in the United States mail, shown on a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the State Judge Advocate.
Rule 4003. Time for Appeal.

The notice of appeal required by Pa.R.A.P. 4002 shall be filed within the following time periods:

(a) A notice of appeal of a judgment of court-martial shall be filed within 30 days upon finality of judgment and issuance to the accused of a written advisement of the right to appeal the judgment to the Superior Court.

(b) A notice of interlocutory appeal shall be filed within three days of the date of the order or ruling being appealed.

Official Note: The judgment of court-martial in paragraph (a) becomes final upon the exhaustion or waiver of the administrative review process provided in Chapter 59 of the Code.

Rule 4004. Content & Service of Notice of Appeal

(a) Form. The notice of appeal shall be substantially in the following form:

PENNSYLVANIA NATIONAL GUARD
COURT-MARTIAL

Commonwealth

v. Docket No. __________

Jonathon Doe, [rank], Defendant

NOTICE OF APPEAL

Notice is hereby given that [party name] appeals to the Superior Court of Pennsylvania from the final judgment of court-martial/interlocutory order or ruling in this matter, dated ____________, __ 20__, and rendered by _____________.

The State Advocate in this matter is ________________, having an address of _________________.

/s/ ________________

_________________
(b) Statement of errors complained of on appeal. A concise statement of errors complained of on appeal in conformance with the following requirements shall be appended to the notice of appeal:

(1) The statement shall set forth only those orders, rulings, and errors that the appellant intends to challenge.

(2) The statement shall concisely identify each order, ruling, or error that the appellant intends to challenge in sufficient detail to identify all pertinent issues for the authority that rendered those orders or rulings.

(3) Issues not included in the statement are waived.

(c) Additional content for notice of interlocutory appeal.

(1) The notice of interlocutory appeal shall be accompanied by a request for transcript when the relevant proceedings have not been otherwise transcribed. The State Judge Advocate shall arrange for the necessary transcription and inclusion into the record.

(2) When the Commonwealth appeals from an interlocutory order or ruling, the notice of appeal shall include a statement that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(d) Service. A copy of the notice of appeal shall be served on all parties and the convening authority. If the appeal is from an interlocutory order or ruling, then a copy of the notice of appeal shall also be served on the presiding military judge.

Official Note: The requirements of subparagraph (c)(2) are set forth in 51 Pa.C.S. § 5919(c). Pursuant to 51 Pa.C.S. § 5719(c), a copy of the record of proceedings, including a verbatim transcript of proceedings and testimony, of any general or special court-martial resulting in conviction shall be given to the accused as soon as it is authenticated. This requirement obviates the need to include a request for transcript with a notice of appeal of a final judgment of conviction. However, this statutory provision does not extend to interlocutory matters. Therefore, a notice of appeal of an interlocutory order or ruling must include a request for transcript, as required by Pa.R.A.P. 4004(c)(1).
Rule 4005.  Filing of Notice of Appeal

Three copies of the notice of appeal shall be filed with the State Judge Advocate, who immediately shall:

(a) stamp it with the date of receipt. That date, or the date of earlier deposit in the United States mail as prescribed by Pa.R.A.P. 4002, shall constitute the date of filing of the appeal;

(b) transmit a copy of the notice of appeal and the filing fee to the Prothonotary of the Superior Court; and

(c) transmit a copy of the notice of appeal to the authority responsible for rendering the complained of error.

Rule 4006.  Opinion in Support of Order or Ruling

The authority that entered the order or made the ruling giving rise to the notice of appeal shall file of record with the State Judge Advocate either:

(a) a brief opinion of the reasons for the order or ruling or other errors complained of; or

(b) specify in writing the place in the record where such reasons may be found.

If the case appealed involves an order or ruling issued by an authority who was not the authority entering the order or making the ruling giving rise to the notice of appeal, the authority entering the order or making the ruling giving rise to the notice of appeal may request that the authority who entered the earlier order or made the earlier ruling provide an opinion to be filed to explain the reasons for that order or ruling.

Rule 4007.  Record on Appeal

(a) Responsible office. The State Judge Advocate shall be responsible for the assembly and transmission of the record on appeal.

(b) Composition of the record. The record shall consist of:

(1) The authenticated record of the court-martial, including a verbatim transcript of the proceeding and testimony, the pleadings, and evidence.
(2) The order or ruling of the authority to be reviewed.

(3) The findings or report on which such order or ruling is based.

(4) Submissions, recommendations, reviews, and orders or rulings arising from post-trial administrative review and action.

(5) A copy of the written advisement of right to appeal.

(6) Any opinion of the reasons for the order or for the rulings or other errors complained of.

(c) Certification and organization of record. The State Judge Advocate shall certify the contents of the record, which shall be organized with the documents arranged in chronological order, numbered, and affixed to the right or bottom edge of the first page of each document a tab showing the number of that document. Thereafter, the entirety shall be bound and shall contain a table of contents identifying each document in the record.

(d) Time and notice. The State Judge Advocate shall file the record with the Prothonotary of the Superior Court within 60 days after the filing date of the notice of appeal. The Superior Court may shorten or extend the time prescribed in this paragraph. Upon filing, the State Judge Advocate shall mail a copy of the list of record documents to all counsel and to any unrepresented party.

(e) Omissions from or misstatements of the record below. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the Superior Court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

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Rule 1925. Opinion in Support of Order

(a) Opinion in support of order.

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(3) Appeals arising under the Pennsylvania Code of Military Justice. - In an appeal arising under the Pennsylvania Code of Military Justice,
the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. See Pa.R.A.P. 4004(b).