



NONPROFIT ADVISOR

For DAV Departments and Chapters

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PROTECTING YOUR SERVICE PROGRAM - PART ONE

Many of our departments and chapters have substantial service programs that contribute significantly to DAV's reputation as the unsurpassed leader in the veterans claims' arena. Certainly, members of DAV will need no convincing about the important mission that a service officer undertakes in representing a veteran. The benefits that are being sought are the hard-won compensation for disabilities incurred in the service of our country. Sometimes, these benefits can mean the difference between a life of security and dignity versus a marginal existence. When a veteran approaches a service officer, the service officer has a life in his hands.

We are living in a litigious environment. Sometimes, it seems that people will sue other people or organizations for just about anything, from a cup of coffee that is *too* hot to the emotional distress that can arise if a bank clerk is a little abrupt. It appears that the subjects of litigation are limited only by the imaginations of plaintiffs or the lawyers who represent them. With a little bit of planning, a department or chapter can do a lot to insulate its service program from liability.

PROTECT THE PRIVACY OF CLIENTS

When a service officer helps a veteran, he is often given access to the most private and confidential information about the claimant's life. This information may come to the attention of the service officer through examination of service records and other official documents, or by speaking with the veteran directly. Whatever the source, the service

officer's receipt of this information is for the express – and sole – purpose of assisting the veteran. Details of the veteran's life, whether health-related or otherwise, should never be disclosed to anyone, even a trusted friend or spouse. Federal law contains broad prohibitions against the release of such information. Even in those cases where federal statutes may not apply, the unauthorized release of claim-related information could subject the service officer (and DAV, at all levels) to a costly and embarrassing lawsuit for invasion of privacy.

AVOID DISCRIMINATORY TREATMENT

Although the books on discrimination could – and do – fill libraries, the concept is pretty easy. Discrimination consists of treating people differently because of their race, or age, or color, or national origin, or religion, or disability, or sex. Treat everyone the same and you won't have to worry about that one.

A special, and especially vile, form of discrimination is sexual harassment. Basically, sexual harassment consists of unwanted sexual or quasi-sexual advances. It is especially pernicious if the aggressor has authority over the victim, or is in a relationship of trust with her. In the service context, sexual harassment might consist of a male service officer suggesting to a female claimant that he will do an extra-careful job on her claim if she agrees to date him. She declines, and he "loses" the paperwork on the claim. Sexual harassment? You bet! And it was sexual harassment the moment the service officer made the proposition. Lord knows, there is a place for sex. Maybe lots of places. But



the service office isn't one of them. Sexual harassment claims are hard to prove, but even harder to disprove. Don't get involved in one of these cases.

AVOID OBVIOUS NEGLIGENCE

As a service officer, you are bound to perform your duties according to the standard applicable to other service officers. In large measure, that means following applicable laws and DAV policies. If you fall short of that standard, and a veteran suffers a loss because of it, you, and DAV, could be liable for negligence. The most common example of this would be a late-filed claim that resulted in a later effective date. Even worse would be a missed appeal deadline, which could bar an otherwise good claim. Apart from late-filed claims, there are too many examples of possible negligence even to begin listing them. The bottom line is that anyone doing a half-hearted, hurried job is dramatically raising the risk of engaging in negligent.

Imagine a service officer hurrying to get to her son's Little League baseball game. She races through her last interview of the day, and then shoves a pile of work into the drawer, for completion the next morning.

The little boy is injured in the game, and the service officer misses work for a week. When she comes back, she has forgotten all about the work in the

drawer, which languishes there for several months. Thirteen veterans have delayed effective dates; one loses his appeal rights. The service officer and her organization are involved in lengthy litigation. A careless approach to the job – no matter what the reason – invites problems. Better not to do something than to do it carelessly.

A famous actor of years ago liked to tell a story that when he was a kid, he would go to a certain grocery store where the owner would always give a thirteenth roll in a dozen, or a few additional slices of cheese. When the boy asked about the reason for the generosity, the owner simply said "It never hurts to give a little something extra." That maxim is good in all fields. "Giving something extra" is the opposite of negligence. Take a little extra care, extra time, have a bit more patience – these are the habits that will prevent negligence claims.

TO BE CONTINUED IN THE NEXT ISSUE

Nonprofit Advisor is prepared by the Office of the DAV's General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.