



# NONPROFIT ADVISOR

For DAV Departments and Chapters

Volume 2, No. 3

Summer 2010

## PROTECTING YOUR SERVICE PROGRAM – PART TWO

This issue of the newsletter continues the topic from the previous one – how to protect department and chapter service programs from needless risk and liability.

### DON'T PROMISE IF YOU CAN'T DELIVER

“Puffing” is what lots of salesmen do. Put simply, it’s promising the moon and delivering a small asteroid. In the service context, one can only promise what one can deliver – a careful, intelligent approach to assisting the veteran in filing his or her claim. You certainly cannot promise a particular result, because the decision maker – usually VA— is not under your control. When you promise results, you build expectations and set the veteran up for a letdown and set yourself up for a fall. Be very careful about making statements like “this is a sure thing,” “you’ve got a slam-dunk winner here” and other such guarantees.

Veterans trust service officers, and they trust no one more than DAV service officers. They are inclined to rely on and put their faith in what their service officers tell them. As such, it is necessary that one’s statements not go beyond one’s ability to deliver.

Suppose a claimant is seeking a rating increase from 30% to 100% for a certain disability. After interviewing the vet, the service officer concludes that the increase will certainly be granted, and so assures the claimant. In reliance on those representations, the vet goes out and buys an expensive car, locking himself in to high monthly payments.

The claim fails. In fact, the total compensation is reduced. The claimant’s financial life is in shambles and he blames everything on the service officer and sues under a theory called “detrimental reliance” [I believed what you told me, acted on it, and look where it got me]. It will be a long expensive case. Who wins? Anyone’s guess.

### DON'T IGNORE THE CLIENT

You know what the most common cause of malpractice lawsuits against lawyers is? Lousy legal work, you say? Well, guess again. The biggest complaint that clients have against lawyers is “he didn’t pay attention to me.” Sometimes that inattention can take the form of an unreturned phone call, an obviously hurried interview or maybe even just a facial gesture or a rolling of the eyes. All these behaviors can send an undeniable message that the client’s concerns are just not that important.

Of course, if a service officer blows off a client and the client wins anyway, there is probably not much risk of financial harm. Harm to DAV’s reputation is another matter. But if the client loses, the client is going to be both disappointed (at the loss) and angry (at the service officer). That’s a dangerous combination. Angry clients tend to sue, even if they are angry about something other than the bad result in the legal proceeding.

A quick phone call, a letter, a postcard may be all that is needed for client relations. In personal meetings, the service officer needs to be engaged and interested, even on those days when it’s tough. Just imagine that you are sitting on the other side of the desk, or at the other end of the phone. How would you like to be



treated? The old maxim, “Do unto others . . .” goes a long way toward describing the best way to act.

## **PROTECTION**

The best protection against liability is to avoid the conduct that creates it. A careful, thoughtful approach to service work is better than any insurance policy.

Some people have the mistaken impression that volunteer service officers are immune from liability. Such immunity is dependent upon each state’s law, and is by no means universal. Moreover, no immunity statute will protect against an injury that a client suffers because of a service officer’s gross negligence or intentional misconduct. Even if the service officer happens to be immune, it’s a good bet that the organization – in this case, the DAV department or chapter – is not.

## **DAV INDEMNITY PROGRAM**

The DAV National Organization, in an effort to protect the chapter and department programs that are a vital part of its array of services, has for some years sponsored a unique indemnification program to mitigate – and in many cases eliminate – the financial risk of service work at the chapter and department level. The outline that follows summarizes the essentials of the program.

### ***WHAT CLAIMS ARE COVERED:***

Negligence (but not gross negligence or intentional misconduct) by an employee or volunteer in handling a veterans benefit claim in the context of a chapter or department service program.

No indemnification will be available unless the unit or person against whom the claim is made notifies the National Adjutant or his designee immediately upon receipt of notice of the claim and agrees to surrender control of the defense to the National Organization.

### ***CONDITIONS OF COVERAGE:***

Immediate notification to National Organization (National Adjutant) when claim received; ongoing cooperation in defense.

### ***WHO IS COVERED:***

DAV departments and chapters, their employees and volunteers.

### ***WHAT EXPENSES ARE COVERED:***

Legal Fees and Settlement/Judgment expenses.

### ***LIMITS OF COVERAGE:***

#### **Level One: \$500,000 (no deductible)**

Applies if the service officer was accredited by VA through DAV at the time of the occurrence

#### ***OR***

Applies when an unaccredited service officer (1) was in compliance with DAV National training and certification requirements and (2) forwarded all filings to a National Service Office for submission to VA

#### **Level Two: \$100,000 (\$1,000 deductible)**

Applies in all other cases assuming basic eligibility for coverage (see “WHAT CLAIMS ARE COVERED” above).

**The above is only a summary and should not be considered in any way to modify the program as originally promulgated in 2002.**

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.