



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

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NONLAWYERS AND PROFESSIONAL MALPRACTICE: WHERE DO SERVICE OFFICERS STAND?

Lawyers and service officers both represent veterans before the VA. Both groups make mistakes. Both can get sued. But what are the legal standards? Does the law treat service officers the same way as it treats lawyers? Should it?

This question is very important to DAV, as our nationwide network of service officers – national, transition, department and chapter – constitute the marquee program for which our great organization is known. (Our various kinds of service officers will hereafter be referred to as NSOs, TSOs, DSOs and CSOs.)

ONE PROBLEM, THREE ANSWERS

There is very little case law regarding this issue. There is only slightly more discussion in legal treatises and journals. What is clear is that there are three schools of thought on whether service officers are subject to the same liability standards as lawyers.

The “Yes” School: There are a handful of commentators and judges saying that if service officers are going to play in the same ballfield as lawyers, they should play by the same rules.

The “No” School: A very small number of courts have advanced the odd view that service officers cannot be held liable for “malpractice,” as they are not subject to any standard of practice in the first place.

The “Keep the Promise” School: This school, which appears to be growing, posits that service officers should say what they are going to do, and be held to their representations.

EDITORIAL COMMENTS

It does appear that the “no” school (which would absolve service officers of any responsibility) borders on the idiotic. In addition to inviting every kind of scoundrel and charlatan into the VA representation arena, this position undercuts the reasonable – and accurate – expectations of veterans who place their faith and lives in the hands of service officers every day.

The “yes” school is unrealistic, and the United States Court of Appeals for the Federal Circuit agrees. Service officers are an outgrowth of the long-cherished national policy that veterans should not have to pay for the privilege of receiving benefits earned by blood. Service officers, who provide free assistance, keep that commitment. For example, NSOs, on average, handle ten to twenty times the number of cases as the average veterans lawyer (generally with equal or better results). It would be folly to expect them to devote the same amount of work to each case.

The “keep the promise” school has it right. Nonlawyers – service officers or not – should be held to their promises. For example, at DAV, we promise to provide quality, effective and committed assistance to veterans as they navigate the labyrinth of the VA system. And we do it, about 250,000 times a year.



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Do we keep the promise? We sure do. Statistics don't lie. The average "mistake" rate for DAV service officers at all levels, combined, is about .04%. By contrast, the average rate for lawyers in workers compensation firms (where the work is similar to VA representation) is more than TEN TIMES that number. Small wonder that so many veterans use DAV service officers. (An added bonus: it's free!)

LOWERING THE RISK AND PLAYING FAIR

DAV continues to make herculean efforts to ensure that our service program remains the best in the business and that our many service officers can help veterans without worrying about lawsuits. These protections are in place:

Training: Our training at all levels is the best in the business. Each NSO undergoes more than a year of intensive instruction, utilizing a state of the art training program. In addition, DAV delivers continuing education for the duration of an NSO's career. Supplementing that, and available to all NSOs, are research tools covering every aspect of claims representation.

TSOs, DSOs and CSOs also receive the benefit of carefully planned instructional programs. Our service officer certification program – another DAV innovation – means veterans can be confident when they choose to start the claims process with a local representative.

Quality Control: DAV's system is designed to maximize involvement of NSOs, the most highly trained service officers in our program. All other DAV service officers routinely forward filings for NSO review before submission to VA, thereby providing an additional check against errors and omissions.

Insurance: DAV insures its NSOs for mistakes in the handling of veterans claims. Significantly, the national organization has been with the same insurer for seven years. To date, there has never been a claim that has reached the policy deductible (usually \$35,000 to \$50,000).

Indemnity: The DAV Board of Directors provides a broad policy of indemnification (financial protection) to department and chapter service programs. The details of this generous coverage are reprinted in the booklet containing the National Bylaws.

Acknowledgement: In a handful of cases each year, most of which it self-discovers, DAV informs veterans of mistakes made in the handling of a claim and voluntarily reimburses any financial loss. We know of no law firm or other VSO with such a veteran-friendly program.

A famous insurance company has for many years used "You're In Good Hands With Us" as its tagline. Veterans can feel the same way about the DAV service program.

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 address individual situations.