

# Memorandum

## Department of Veterans Affairs

Date: June 18, 2012

From: Assistant General Counsel (026)

Subj: Advising Clients on Working with Non-VA Legal Service Providers

To: Regional Counsels, Assistant General Counsels

### Background

The President and the Secretary of Veterans Affairs have established a goal of ending homelessness among Veterans by 2015. The Veterans Health Administration has determined that lack of access to legal representation when faced with outstanding warrants or fines, child support arrearages, driver's license revocation and other legal matters contributes significantly to a Veteran's risk of becoming and remaining homeless.

The Department of Veterans Affairs (VA) has been working with the Department of Justice's Access to Justice Initiative, which was launched two years ago to improve access to justice for all Americans, regardless of status, income, or wealth. The Initiative shares the President's and the VA's commitment to improving veterans' access to legal services.

Over the past year various non-government organizations, including non-profits, private pro bono attorneys, bar associations and law schools have requested to partner with VA facilities to assist Veterans with their unmet legal needs. On September 6, 2011, after obtaining guidance from the Office of the General Counsel (OGC), the Veterans Health Administration (VHA) issued Directive 2011-034, entitled "Homeless Veterans Legal Referral Process" (copy attached). Since then, several Regional Counsels have requested guidance on legal issues related to working with non-VA legal service providers. This memorandum reflects the current OGC guidance as to the most common legal issues that have arisen in relation to Directive 2011-034.

**1. Memorandum of Understanding.** All agreements between management of a VA facility and a non-VA legal service provider should be reduced to writing in the form of a memorandum of understanding ([MOU – link to examples](#)). The facility should have the Regional Counsel review the MOU prior to executing it. Where the non-VA legal service provider is requesting access and use of physical space controlled, owned or in which VA has an interest, an MOU alone is not sufficient.

**2. Space-sharing agreements.** As stated in the Directive, office space may be provided to non-VA legal service providers only under certain restrictions. Non-VA legal Service Providers must have either a Revocable License to use the space or a lease. To provide space through a revocable license, the facility must comply with applicable policy promulgated by the Office of Facilities Management. The facility and the provider organization must complete VA Form 10-6211, Revocable License for Non-Federal Use of Real Property, and include the disclaimer in Box 9. To provide space through a lease, the facility must comply with 38 U.S.C. 8122(a)(1), the authority to procure and dispose of property and to negotiate for common services. Follow the links for the delegation of authority to the field, and the Information Letter supporting it. See also VHA Directive 2005-004. Regional Counsel must review and concur prior to execution of all outleases, revocable licenses for less than 5 years, and permits affecting or involving real property in which VA has an interest, or over which VA has control.

**3. Protection of Patient Records from Unauthorized Disclosures.** Any disclosure by a VA employee of information or records about a Veteran must be done in accordance with the Privacy Act, HIPAA and other applicable laws, regulations and VA procedures. Non-VA legal services providers must comply with these regulations where requesting any privacy protected information from VA. Requests for privacy protected information must include a waiver agreement signed by the Veteran before any disclosure by VA can be permitted.

**4. Demarcation of non-VA activities.** It is important that Veterans using legal services at a VA facility or based on a VA referral understand that the provider is not a VA entity and that VA does not endorse the legal advice being provided. VA staff may not endorse any particular legal service provider. All written VA communications with Veterans regarding non-VA legal service providers must include the following disclaimer:

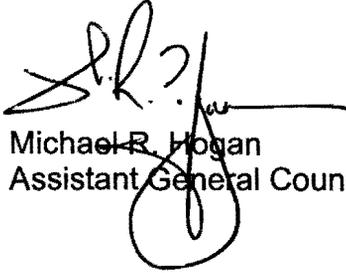
VA assumes no responsibility for the professional ability or integrity of the organizations whose names appear on this list. This referral does not constitute an endorsement or recommendation by VA.

If a VA facility provides office space to a non-VA legal service provider, a disclaimer based on the one provided above must be prominently displayed in the office space of the non-VA legal service provider in an area offering an unobstructed view for anyone entering the office.

**5. Due Diligence and Other Matters.** When a VA facility requests guidance on a Non-VA legal service provider's request for office space, Regional Counsel should take reasonable steps to ensure that the non-VA legal service provider is a legitimate, licensed entity entitled to legally practice law within the relevant jurisdiction. For example, the Regional Counsel attorney should assist the facility in verifying that the provider's attorneys are active members of the state bar. If the provider will be representing Veterans in VA benefits claims, the Regional Counsel attorney should determine, with the assistance of Staff Group II, whether the provider's employees are properly accredited by VA. The Regional Counsel should also assist in verifying that

the provider has legal malpractice insurance that is adequate to protect the interests of Veteran clients and VA.

Questions related to this memorandum and the policy detailed within should be directed to Bill Russo, at (202) 461-7566 or Bill.Russo@va.gov.

A handwritten signature in black ink, appearing to read "M.R. Hogan", with a horizontal line extending to the right and a large circular flourish below the name.

Michael R. Hogan  
Assistant General Counsel (026)