



LEGAL SERVICES CORPORATION

Office of Program Performance

PROGRAM QUALITY REPORT

FOR

Veterans Consortium Pro Bono Program

Recipient Number: 309686

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Final Program Quality Report

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INTRODUCTION

The Legal Services Corporation's (LSC) Office of Program Performance (OPP) conducted a program quality visit to the Veterans Consortium Pro Bono Program (Consortium or program) from June 23 to June 25, 2009. The team members were team leader Bristow Hardin, LSC program analyst; Nan Heald, consultant; Susan Jones, consultant; Sandra Montrose, consultant; and Glenn Rawdon, LSC Program Counsel.

Program quality visits are designed to ensure that LSC grantees are providing the highest quality legal services to eligible clients. The Consortium is not funded through the LSC Act and is not subject to the provisions of the LSC Act and the LSC regulations.¹ Moreover, as elaborated below, the scope and focus of the Consortium's operations prescribed by Congress significantly differ from those of grantees funded through the LSC Act. Accordingly, the site visit was tailored to address the Consortium's unique characteristics.

To conduct its assessment, the team carefully reviewed documents LSC has received from the program, which include its application submitted in response to a 2003 LSC Request for Proposals (RFP); the renewal narrative for 2009; reports on the cases analyzed and placed for assignment with volunteer attorneys; and numerous documents the program submitted in response to LSC's requests in advance of the visit. On site, the team visited the office of the Consortium's Case Evaluation and Placement Component. In addition to speaking to most of the Consortium staff members, members of the team met with all members of the Consortium board, judges of the U.S. Court of Appeals for Veterans Claims (Court), staff members of the Court, Consortium contract employees, and staff of the Department of Veterans Affairs Office of General Counsel. Team members also conducted phone interviews with the Consortium's former board chair, the executive director of the National Organization of Veterans Advocates, and others knowledgeable about the Court and the Consortium's work. Additionally, LSC conducted a survey of the Consortium's pro bono attorneys.

In performing its evaluation of the grantee's delivery system, OPP relied on the standards set forth in the Congressional legislation governing the program's operations, the LSC Performance Criteria, the ABA Standards for the Provision of Civil Legal Aid and the grantee's funding documents and Grant Assurances. Because of the unique nature of the Consortium's mission and operations, not all of the LSC Performance Criteria are applicable to the organization's operations. This report is organized according to the provisions of LSC Performance Areas that are most relevant to Consortium's operations.

¹ The program was established pursuant to the provisions of Public Law: 102-229, § 109, 105 Stat. 1701, 1710 (12/12/91). Subsequent Congressional appropriations have not changed these provisions.

Program Overview

The Veterans Pro Bono Program was established by Congress in 1991 to facilitate the provision of pro bono legal assistance to individuals who could not afford to hire an attorney to represent them before the United States Court of Appeals for Veterans Claims (Court),² which is located in Washington, DC.³ These cases are appeals of the decisions of the Board of Veterans' Appeals (BVA), the administrative appellate body of the Department of Veterans Affairs (DVA). Congress also specified that these activities would be funded through grants or contracts made by the LSC. The Consortium has been the grantee since 1992.

Congress circumscribed the Consortium's work by identifying the clients the Consortium will serve – pro se appellants before the Court – as well as the program's core activities – case screening and referral, training and education of attorneys and related personnel, and facilitating pro bono representation of the clients it serves. To ensure it facilitates effective pro bono representation of appellants, the Consortium must also provide mentoring and related support to pro bono attorneys. Further, since the Court facilitated the establishment of the Pro Bono Program to reduce the number of pro se appellants, the Consortium also serves the interests of the Court, albeit indirectly. Thus, the Consortium's board chair articulated the views of others in noting that the Consortium has three constituencies: appellants, the pro bono attorneys, and the Court.

This perspective fundamentally informs the Consortium's mission. Although its core mission is to ensure pro se appellants receive high quality representation before the Court, the Consortium defines its mission to include two related elements: expanding the pool of attorneys with necessary knowledge to represent appellants before the Court and reducing the number of pro se appellants before the Court.

The operational units of the Consortium correspond to the Congressional requirements. The Consortium has four operational components.

- The Outreach Component publicizes the program and recruits pro bono representatives (PBRs).
- The Education Component provides training, resource materials and mentoring support to the program's PBRs.
- The Case Evaluation and Placement Component (CEPC) processes pro se appellants' applications for services; evaluates appellants' cases to determine if they have merit; notifies those appellants with cases lacking sufficient merit that their case will not be accepted and the reason(s) for that determination; places cases with merit with PBRs; provides specific guidance about case handling to the PBRs; and monitors the cases to ensure the PBRs meet the necessary deadlines.
- The Direct Representation Component (DRC) handles a small number of cases that involve complex legal issues or issues that have significance for veterans law

² Public Law: 102-229, § 109, 105 Stat. 1701, 1710 (12/12/91)

³ Very few of the cases require oral arguments. Most are determined based solely on the review of the pleadings and record. As a result, appellants are represented by counsel from throughout the country.

The activities of the Outreach and Education Components are significantly entwined and overlapping, and these components are headed by the same director. Accordingly, the remainder of the report will treat these as a single component – the Outreach and Education Component.

The Consortium was established as a partnership of four major veterans services organizations – The American Legion (Legion), Disabled American Veterans (DAV), Paralyzed Veterans of America (PVA), and the National Veterans Legal Services Program (NVLSP) – which had overlapping constituencies and different organizational objectives. In 2006, it was incorporated as a standalone nonprofit organization with 501(c)(3) status.

To secure the support of these groups for the Consortium’s establishment, the organization was structured to ensure its operations were consistent with the institutional interests of the member groups. This organizational structure, which remains in place today despite the recent formation of the Consortium as a standalone nonprofit, has three distinctive characteristics:

- The executive board is comprised of representatives from the four founding “member” organizations as well as a representative of the private bar, who serves as the board chair.
- There is no executive director. The directors of the Outreach and Education Component and CEPC, who are employees of the member organizations, report directly to the executive board, which functions as the Consortium’s de facto executive director.
- The Consortium itself has no employees of its own. The full time staff and consultants (who perform much of the program’s work) are employees of member organizations. In most cases, those who conduct the Consortium’s work are supervised and evaluated by and ultimately accountable to the staff of the organization that employs them rather than to the Consortium board. (Unless otherwise noted, in the remainder of this report “Consortium staff” or “program staff” refer to personnel employed to conduct the program’s work, even if they are legal employees of the member organizations.)

The Consortium has one office, which houses the staff of the CEPC. All but one of the Consortium’s full time staff members work in the CEPC. (The DRC attorney telecommutes from California.) All other staff are housed at the offices of one of the member organizations and perform their tasks on a contract basis. A contractor employed by one of the member organizations serves as the Consortium’s financial officer and performs the program’s financial administration functions.

Neither LSC nor the Court play any role in advocating for Congressional funding for the program. Staff of the member organizations have conducted only sporadic, informal and very limited activities to secure the Consortium’s funding. Instead, the Consortium’s board members, program staff and pro bono counsel perform that role. Currently,

government relations staff from the board chair's law firm (Baker Botts, L.L.P.) provide pro bono assistance to the Consortium to obtain funds needed to support the program's operations. Throughout the Consortium's history, Congressional funding has matched or exceeded the program's budget requests.

Summary of Findings

The Consortium successfully accomplishes its mission of ensuring that pro se appellants receive effective representation before the Court. The Consortium's board and program staff are deeply committed to the organization's mission. The program staff are skilled and knowledgeable. The program trains volunteer attorneys and provides them a range of resources, analytical information and support that equip them to provide effective representation to those pro se appellants whose cases it deems meritorious. PBRs rate highly the full range of services the Consortium provides them: training, resource materials, placement services, mentoring and other support. Several measures indicate the program's PBRs consistently represent effectively veterans in their appeals.

Although the Consortium has successfully accomplished the goals established at its inception, in the nearly two decades since it was created the demands on the Consortium and the context in which it operates have changed. These changes have created new opportunities and challenges for the Consortium. Also in this period, LSC enhanced and more clearly articulated the standards it uses to assess the quality of civil legal services. In 2007 LSC issued revised Performance Criteria that were initially developed in 1993 and revised in 1994, 1995 and 2006 to guide LSC program reviews and the competitive grant process.

The LSC team was very impressed by the dedication and commitment shared by all of the staff and board members associated with the Consortium, and by the high quality work that has been provided despite the absence of some of the kinds of management systems that are critical to efficient service delivery. The leadership and direction provided by members of the board, in particular the chair, Jeffrey Stonerock, and his predecessor, David Isbell, have been integral to the program's achievements. Additionally, the contributions of key staffers, including Brian Robertson and Meg Bartley, the directors of the CEPC and Outreach and Education Component respectively, along with Dave Myers and Carol Scott, the CEPC's deputy directors for case screening and placement, respectively, have been consistently evident despite the unique work relationships required by the current structure.

It is clear, however, that the original structure and operational design of the Consortium, which served it well in securing the program's establishment and stability and which have enabled it to successfully achieve its core mission, now impede its ability to most effectively capitalize on the opportunities and respond to the challenges now before it. Accordingly, the Consortium must adapt its organizational and operational structures and activities. LSC recommends that the Consortium implement a range of measures to strengthen its capacities and improve its future operations. Highlights of the LSC recommendations are that the Consortium should:

- Hire an executive director, have staff work for the Consortium rather than for the member organizations, and expand the program’s board.
- Ensure that program materials and notices are responsive to veterans’ informational needs, reading levels, and language requirements.
- Systematically analyze its case screening and legal work processes and make appropriate modifications to improve them. Issues for consideration include: training and oversight of legal staff; systems for evaluating legal work; the legal expertise, training and support of case screeners; and the contents and format of the screening memos.
- Clarify and ensure the effective implementation of board directives for the program to (1) make case acceptance decisions, as appropriate, based solely on a review of the BVA decision and (2) accept all cases that have at least one non-frivolous issue.
- Develop systems to monitor, supervise and assess services provided veterans by the program on matters not directly related to an appeal before the Court.
- Analyze its technology needs, identify how it can more effectively use technology to improve its services and develop and implement a plan to obtain and employ appropriate technologies. Improving the program’s website to better serve appellants and PBRs should be a priority in this area.

The Consortium’s board recognizes that the program needs to implement significant changes. After the LSC program visit, the board voted to implement measures that are among the major LSC recommendations: changing the Consortium’s organizational structure by hiring an executive director, having staff work for the Consortium rather than for the member organizations, and expanding the board. Effectively implementing those changes and addressing LSC’s other recommendations can enable the Consortium to achieve significant improvements in its operations.

It should be emphasized that the Consortium has consistently achieved its core mission of ensuring that pro se appellants receive effective representation before the Court. The findings and recommendations set forth in this report focus on operational improvements that would enhance the Consortium’s effectiveness in achieving this goal.

PERFORMANCE AREA ONE. Effectiveness in identifying the needs of low-income people in the service area and targeting resources to address those needs.⁴

Goals and objectives.

FINDING 1: The Consortium can improve its mechanisms for establishing organizational goals and objectives.

⁴ The LSC Performance Criteria for Performance Area One “acknowledge the central importance of strategic planning, and envision a dynamic model in which such planning is followed by and interwoven with implementation and evaluation, constantly adjusting objectives and strategies to better address the most critical civil legal needs of the low-income population.” LSC Performance Criteria, 2007, p. 5.

The Consortium has consistently achieved its overriding statutory goal of facilitating the provision of pro bono legal assistance to individuals who can not afford to hire an attorney to represent them before the Court. It has also performed the requisite activities of screening all appeals in which the appellant is unrepresented to identify cases with merit, recruiting appropriate numbers of PBRs, and providing PBRs the training and support required to provide pro se appellants with competent representation.

Notwithstanding its successes in achieving these objectives, the Consortium has no formal or informal processes through which the board and/or staff systematically establish specific organizational goals and objectives. For example, it lacks mechanisms that might allow it to methodically establish targets for the time frames for screening and placing cases, to determine the optimal staffing needed to accomplish specific tasks, or to identify systems to assess program operations.

In addition, the Consortium has not conducted strategic planning or similar processes since 2000. The Consortium decided not to conduct a similar process following 2000 because, as it reported in its 2003 RFP application narrative, it found that the 2000 “exercise was not a particularly fruitful one, given the relatively narrow scope of the program’s mission and the limitations on the board’s ability to affect the circumstances in which it must carry out that mission.”

LSC recognizes that the Consortium’s mission and operational parameters differ from those of other LSC grantees. However, these differences do not obviate the need for the Consortium to set goals and objectives that are tailored to the program’s particular mission and operational context. Moreover, some of the Consortium’s decision-making and operations reflect a lack of clarity regarding the relative priority among the three elements of the program’s mission. Clarifying these priorities would enhance the Consortium’s operational effectiveness.

Given the changes in the context in which the Consortium operates, the impending changes in the program’s organizational structure, and the changing legal needs of appellants, a comprehensive strategic planning process may be a valuable exercise for the Consortium.

Recommendation I-1-1:⁵ The Consortium should establish systematic mechanisms that enable it to effectively set goals and objectives, develop strategies and allocate resources.

Recommendation I-1-2: The Consortium should consider conducting a comprehensive strategic planning or similar process.

⁵ Recommendations in this report will have three numbers. The first corresponds to the LSC Performance Criteria Area, the second to the finding, and the third to the recommendation. Recommendation I-1-1 is therefore the first Recommendation under Performance Area I, Finding 1.

Evaluation and adjustment.

FINDING 2: The Consortium can improve its systems for analyzing and evaluating the effectiveness of its work.

The Consortium's board does not conduct systematic, in-depth evaluations of the program's effectiveness. It also lacks the information about its operations and other relevant data that would enable it to effectively perform these evaluations.

At its monthly meetings, the Consortium board reviews monthly reports produced by the CEPC and RETC directors, but the contents of these reports do not provide the basis for a comprehensive assessment of the Consortium's on-going operations. Additionally, valuable data compiled by the staff (e.g., information from client and attorney surveys, analysis of court decisions) is not analyzed and shared with the board, even though the Consortium's 2003 grant application indicated these data were used by the board to analyze the program's operations. Moreover, a wide range of information that could be helpful (e.g., the amount time staff devote to their respective activities, trends in legal issues in cases screened by the CEPC) is not compiled or analyzed.

Undertaking an inventory of all of these individual staff efforts would allow the Board to determine which are most useful to the program's functioning and to identify the data sets needed to best assess the program's operations. (Also see Findings 16, 22, 23 and 24 below.)

Recommendation I-2-1: The Consortium should establish mechanisms, criteria and the data sets needed to analyze and evaluate its operational effectiveness and efficiency.

PERFORMANCE AREA TWO.⁶ Effectiveness in engaging and serving the low-income population throughout the service area.

Dignity and sensitivity.⁷

FINDING 3: In their interactions with veterans, CEPC staff are professional, affirm veterans' dignity, and are sensitive and responsive to clients' individual circumstances and legal problems.

⁶ The introduction to Performance Area Two notes that a "program must have effective relations with its clients, both on an individual and service-wide basis" and that this Performance Area "sets forth the core values and tenets for creating and maintaining effective relations with clients." LSC Performance Criteria, 2007, p. 13. With respect to the Consortium, "service-wide basis" and "service area" would include the universe of veterans who would be appropriate beneficiaries of the program's services.

⁷ The LSC Performance Criterion dealing with dignity and sensitivity states that a program should "conduct its work in a way that affirms and reinforces the dignity of clients, is sensitive to clients' individual circumstances, is responsive to each client's legal problems, and is culturally and linguistically competent." A program's intake policies and procedures (which include its case acceptance policies) are among the key elements considered under this Criterion. LSC Performance Criteria, 2007, p. 14.

Interviews with CEPC staff, other Consortium staff, and program board members, as well as the observations by the LSC review team indicate that the CEPC staff place a premium on providing services that honor veterans' dignity and that are sensitive to and responsive to the particular circumstances and needs of each individual. Staff endeavor to respond as expeditiously and accurately as they can to veterans who call or send letters or emails seeking information about their case. Staff also seek to inform the attorneys about their clients' requests for information. Because of their great concern about veterans' well-being, staff often try to help appellants on issues unrelated to their appeal or to assist veterans who do not have an appeal before the Court. (See Finding 25 below.)

FINDING 4: The Consortium outreach and application materials are not tailored as well as they should be to the reading levels and other needs of pro se appellants.

The CEPC sends application materials via overnight mail to each individual submitting a pro se Notice of Appeal (NOA) to the Court. The materials include an application for the program's services (the Participation Request Form [PRF]); a brochure (*Your Appeal for Veterans Benefits*) that describes the appeals process and the program's services, and also provides information about how to obtain other counsel; and a financial disclosure form. The appellant can send the application to the Consortium via US Mail (the program provides a self-addressed stamped envelop) or by email.

The solicitation materials sent to pro se appellants are very detailed. They include the necessary Consortium forms which have been developed in order to help an applicant apply for Consortium services. However, their usefulness to applicants may be limited because they are written at too high a reading level and have too much detail. (It is generally recognized that materials should be written at no higher than the eighth grade level to ensure they are understandable to the general population.)⁸

This is of particular concern because the advent of electronic filing at the Court means that each appellant may receive twenty or more solicitations from private attorneys not associated with the Consortium offering to help with the appeal, creating understandable confusion on the part of the recipient. The unique role and services available from the Consortium could easily be overlooked in this situation.

Also, these materials do not inform prospective appellants that they have the option of meeting the program's eligibility requirement by completing the Court's "Declaration of Financial Hardship" form, which is simpler to complete and requires less information than the Consortium's financial eligibility form. Moreover, the materials can create confusion with respect to the appellant's financial eligibility for services, since they reference questions about employment and financial net worth that are not required on the Court's own "Declaration of Financial Hardship" form. These questions are reflected in the Consortium's Policy Paper #4, which was last reviewed in 2003. While the other information may be helpful to private attorneys seeking Equal Access to Justice Act (EAJA) fees, requesting this information at the outset of the application process may create an unnecessary barrier for those trying to access the Consortium's services.

⁸ A tool within Microsoft Word will identify the reading level of a particular document.

Finally, the materials and forms are available only in English. This issue is discussed in Finding 10 below.

Recommendation II-4-1: The Consortium should revise the application materials to ensure they are more useful for applicants. In particular, it should (a) ensure that these are written at no higher than the eighth-grade reading level and (b) consider font size and spacing to make the materials easier to read by older readers and those with some vision impairment.

Recommendation II-4-2: The Consortium should amend its application materials to inform prospective applicants they can meet the financial eligibility requirement by completing the Court’s “Declaration of Financial Hardship” form. The program might include this form with the PRF or provide information about how to obtain it.

FINDING 5: The notices for cases lacking merit may not be helpful to the applicant denied services and may be an inefficient use of the Consortium’s resources.

If the CEPC does not accept a case because it concludes the case lacks sufficient merit, the Consortium sends the appellant a detailed, in-depth legal analysis (which can be four to five pages long) of the reasons the appeal is unwarranted. These letters are based on the case screening memo, focus on the particular issues of the individual appellant’s case and evince concern and sympathy for the veteran’s circumstances.

However, the letters are longer and more detailed than is warranted given the Consortium’s policies and appellants’ needs.⁹ Moreover, they are written at a reading level far higher than that of the general population. Given the length and reading level of the letter and the complexity of the issues it discusses, the letter may have limited value to many appellants, although staff interviews indicate that some veterans are later able to persuade the Consortium to reconsider a rejection decision by correcting or augmenting information in the letter. It is also clear that each letter requires a significant amount of staff time to prepare at a time when the staff face many other demands on their time.¹⁰

Recommendation II-5-1: The Consortium should produce briefer and less detailed notices that explain why the Consortium will not accept an appellant’s case and outline the process and standards used to reconsider that initial rejection.

FINDING 6: The Board’s directive that the CEPC should accept all cases with at least one non-frivolous issue has not been fully clarified. This lack of clarity has affected the

⁹ Policy Paper 5 states in part that: “It is not common practice within the legal services community generally, or among veterans services organizations, to provide a detailed explanation to a prospective client as to why a case was not taken, and typically veterans organizations declining a case do not provide detailed explanations.”

¹⁰ Consortium staff indicated that these detailed memos are required by LSC. This is a misunderstanding that should be clarified.

staff's implementation of this directive, which, in turn, may limit the number of appellants to whom the Consortium provides a PBR.

In 2007 the Consortium board directed staff to accept any case that had at least one non-frivolous issue for appeal. This directive was premised on several factors: a significant number of appellants remain unrepresented when their case is decided by the Court (24% in 2008); the board's desire to ensure that as many veterans as possible had competent assistance in their appeal; and the view that most BVA decisions have errors, even if in many cases these errors may not ultimately result in a remand. The board recognized that the one non-frivolous claim standard would lead the Consortium to accept cases that might have a limited likelihood of success.

The one non-frivolous issue standard is consistent with the Consortium's currently articulated case acceptance standard: Policy Paper 16 notes that "the basic goal of the program is to place every legitimate case with a lawyer." However, case acceptance data indicates that the Consortium may not be accepting for placement all cases that have at least one non-frivolous issue. This may reduce the number of appellants the Consortium represents.

The site review interviews with staff of the Court, the mentors, staff of the DVA general counsel's office, and the Consortium board revealed widespread agreement that a high percentage of BVA decisions contained at least one non-frivolous issue that might warrant a remand. Although estimates of this number varied, the consensus was at least 70% of cases had such errors. (One individual indicated this could be as high as 90%.) These estimates *exclude* those cases that do not meet jurisdictional requirements. Central Legal Staff at the Court also noted that the DVA routinely concedes error in 55% of the cases that go to a mediation conference that occurs prior to the Court's full consideration of appellants' cases.¹¹

In 2008, the Consortium accepted about 40% of the cases it screened for merit. Thus, the CEPC concluded that 60% of cases lacked necessary merit on factual or legal grounds to continue with the appeal. This seems inconsistent with the broad consensus noted above, that 70% (or more) of BVA decisions contain issues warranting remand.

However, as the grantee stated in its comments, several factors may limit the pool of cases that the Consortium reviews. Most significantly, private attorneys take approximately one-third of the cases and VSOs take and/or refer a significant number of cases. Although these factors are important, they do not seem to explain why 60% of the cases the Consortium does screen do not meet the "have at least one non-frivolous issue" standard.

Moreover, the annual percentage of cases resulting in a remand of the Consortium's PBRs has consistently fallen in the 70%-75% range. It seems this rate would be lower if

¹¹ Interviews with the Court's staff and judges, Consortium board and staff, and the mentors indicated that the Court had asked the Consortium to take cases it had previously rejected but which the Court determined had a significant impact on veteran's law. In its comments, the grantee stated that this only happened once.

the program were accepting all cases with at least one non-frivolous issue, including those with a small likelihood of success.

Program staff referenced concerns that a looser standard would raise the specter of Rule 11 sanctions. However, if a case does indeed have at least one-frivolous issue – which interviews with mentors, board members, staff of the Court and judges indicated is the case – such concerns seem ill-placed. Additionally, the Court’s Chief Judge and staff stated that the Court would be amenable to the Consortium providing assistance to pro se appellants whose cases may have limited likelihood of success and that the Court would notify the Consortium if its cases created Rule 11 problems.

LSC recognizes that a range of interrelated issues complicate the implementation of this board directive. For example, not only can a non-frivolous issue be defined on a wide continuum, it is inherently difficult to develop a precise definition for it. Moreover, accepting more cases could increase the program’s budget costs (e.g., staff for screening, training, mentoring; training and resource materials), volunteer attorneys may be less inclined to accept cases with a limited chance of success, and appellants might think a lower success rate indicates the Consortium does not provide high quality representation.

Recommendation II-6-1: The board should clarify its directive that the Consortium accept all cases with at least one non-frivolous issue to ensure this directive is consistently implemented.

FINDING 7: The Consortium board has not fully clarified and ensured the implementation of its directive to make case acceptance decisions – as appropriate – based solely on the review of the BVA decision.

In 2008 the Consortium board directed staff to conduct an initial screening of cases based on the review of the BVA decision. This decision was premised on the consensus among board members that a substantial portion of BVA decisions contained errors and that case reviewers with requisite expertise could readily identify cases that would warrant an appeal. Making a case decision at this stage would enable the Consortium to reduce from four-to-five months to one month the time period between receiving the PRF and informing the appellant of its case acceptance decisions. Staff of the Court, the mentors, staff of the DVA general counsel’s office, and members of the Consortium board opined that in the great majority of cases the review of the BVA decision can indicate (a) whether there is an issue that would warrant an appeal or (b) enable a screener to identify one or two documents in the case file that would allow them to make this determination.

Based on the review of CEPC data, it seems this directive may not have been effectively implemented. According to the most recent CEPC report (for June 2009), 91 BVA decisions were screened. Of these, 10 cases were rejected for reasons unrelated to the merits of the case¹² and three were not filed in a timely fashion. Of the remaining 78, 19

¹² The BVA decision was not yet available for two; the appellant was financially ineligible in two; and six appellants retained their own attorney.

(24.3%) were rejected because they were deemed to lack merit, 5 (6.4%) were accepted for placement and the remaining 54 (66.7%) were referred for a full screening.

However, given the consensus among staff of the Court, the mentors, staff of the DVA general counsel's office, and members of the Consortium board that in a large majority of cases the review of the BVA decision can enable an experienced screener to make a case acceptance decision, it appears that the CEPC's review of the BVA decision should have resulted in far more cases being accepted for placement rather than being accepted pending a full screening.

Implementation of this policy has been complicated by the lack of clarity of the standard for accepting cases. (See Finding 6 above.) Until this is clarified the CEPC will be unable to effectively implement this board directive.

Recommendation II-7-1: The board should implement steps to ensure CEPC staff effectively implement the policy of screening cases based on the review of the BVA decision.

FINDING 8: The Consortium's website does not facilitate veterans' ready access to the program's services and other information.

The content, links and functionalities of the Consortium's website do not enable veterans to readily access the program's services and other information that would address their legal problems. In February of 2009 a committee comprised of the director of the Outreach and Education Component, a board representative and LSC's grant administrator made preliminary recommendations to the board for improving the website's content, usability, consistency and appearance. The board subsequently solicited proposals for improving the site. The board decided to defer action on this matter until it received information from the LSC site visit and other sources.

Recommendation II-8-1: The Consortium should upgrade its website to ensure the site has the content, appearance and functionalities that enable veterans to readily access the program's services and to obtain other appropriate information that is consistent with program's mission. These upgrades should incorporate the lessons learned from the operations of LSC-funded statewide websites around the country. (LSC can assist the Consortium in this endeavor.)

Access and utilization by the low-income population.¹³

FINDING 9: The Consortium's informal mechanisms to addresses the needs of veterans with limited English proficiency (LEP) are insufficient.

¹³ The LSC Performance criterion in this area highlights the need for a program to be accessible to and facilitate effective utilization by clients throughout its service area, including all major segments of that population, and those who traditionally have had difficulties accessing or using civil legal assistance.

The Consortium has no formal policy for addressing the needs of LEP populations. A communication dated May 26, 2009, sent to the LSC team leader by the CEPC assistant director for screening, stated that the “program has never had the need to develop a separate policy” regarding services to LEP populations, in part because it is assumed that appellants “must have some basic understanding of the English language, as that is a necessary condition for acceptance into the U.S. Armed Forces” and, partly, because the Consortium has been able to look to staff of allied organizations or pro bono attorneys when the specific need arose.

These practices are of questionable efficacy given the changing demographics of our country and the widespread recognition that government agencies and other entities receiving federal funds must take steps to ensure LEP populations have meaningful access to services.¹⁴ Veterans are among those in need of such services. For example, as noted in a report by the U.S. Government Accountability Office (GAO), “As its veteran population becomes more diverse, VA faces challenges in bridging language and cultural barriers as it seeks to provide quality health care services to [VA] veteran population.”¹⁵ In 2002 the Veterans Health Administration issued a directive to, in part, “ensure that LEP persons have meaningful access to their programs and services.”¹⁶

It is unlikely that the demographic and cultural characteristics of veterans with appeals before the Court are substantially different from those of veterans who seek assistance at VA medical facilities. Moreover Consortium staff reported that the Court continues to process appeals on behalf of widows of Filipino veterans as well as an increasing number of Spanish-speaking veterans. Staff also reported that some PBRs have LEP. Accordingly, the Consortium should implement steps specifically designed to ensure that LEP populations have meaningful access to its services.

There are no materials on the Consortium’s website in Spanish, the first language of a significantly growing portion of the veterans population, or in Tagalog, the first language of many Filipino veterans. As a major point of entry to the program’s services, website materials in these languages could increase appellants’ access to the Consortium’s services. Further, all application and informational materials are only in English. This could limit the number of applications from veterans whose first language is not English. Finally, the CEPC does not have bilingual staff who can readily communicate with callers who lack proficiency in English.

¹⁴ The need for services to individuals who are Limited English Proficient prompted the issuance of Executive Order 13166, which requires executive agencies to establish mechanisms that provide meaningful access to services for LEP populations. In December 2004 LSC issued *Guidance to LSC Programs for Serving Client Eligible Individuals with Limited English Proficiency*. See: <http://www.lri.lsc.gov/pdfs/05071801.pdf>. Federal LEP guidance and language access plans are available on a Federal Interagency Task Force website: http://www.lep.gov/guidance/guidance_index.html#.

¹⁵ U.S. Government Accountability Office, *VA Health Care: Facilities Have Taken Action to Provide Language Access Services and Culturally Appropriate Care to a Diverse Veteran Population*, GAO-08-535, May 28, 2008, p.2.

¹⁶ The Veterans Health Administration (VHA) Directive 2002-006, Limited English Proficiency (LEP), Title VI Prohibition Against National Origin Discrimination in Federally-Conducted programs and Activities in Federal Financial Assisted Programs, renewed as VHA Directive 2007-009. (Section 4.a.)

Recommendation II-9-1: The Consortium should analyze the language access needs of appellants (and PBRs) and develop and implement a plan to address those needs.¹⁷

Recommendation II-9-2: The Consortium should develop an LEP policy that is posted on its website and referenced in application materials which makes it clear that Consortium services can be provided in languages other than English.

Recommendation II-9-3: The Consortium should add content in Spanish and Tagalog to its website.

Recommendation II-9-4: The Consortium should develop a contract with an interpreting service that can provide professional high quality interpretation of documents and assist in phone interviews as necessary for LEP appellants.

PERFORMANCE AREA THREE.¹⁸ Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area.

Legal representation.

As noted above, the Consortium's unique delivery system was forged when the Consortium was first set up in the early 1990s. The Consortium's operational components mirror the requirements specified by Congress: case screening and referral; training and education for attorney and related personnel; and encouragement and facilitation of pro bono representation. Its operations and staffing were designed to meet the demands of pro se appellants when the Court was first established. And the essential elements of its organizational structure – the absence of an executive director and no staff of its own – were the product of compromises required to secure the Consortium's establishment. Also, as noted above, this system has been little changed since it was established.

The following steps comprise the Consortium's case handling process.

- The Consortium sends its packet of materials to pro se appellants as soon as they are identified on the Court website.

¹⁷ Useful information in this regard includes VHA Directive 2007-009, and U.S. Government Accountability Office, *VA Health Care*. Also, Federal LEP guidance and language access plans are available on a Federal Interagency Task Force website: http://www.lep.gov/guidance/guidance_index.html#.

¹⁸ Performance Area Three addresses the program's implementation of its goals, objectives and strategies through the delivery of services. Criteria 1, 2, and 3 of this Performance Area are particularly relevant to the Consortium's operations. Criterion 1 – which focuses on Legal Representation – expresses the need for a program to “conduct its direct legal representation, in both full and more limited forms, in an effective and high quality fashion.” It specifically highlights (among other capacities) the need for a program to utilize “systems, approaches, and techniques sufficient to ensure that the representation is carried out with maximum effectiveness.” LSC Performance Criteria, 2007, p. 21-25. Criteria 2 and 3 are discussed below.

- Once the completed Participation Request Form [PRF] is returned to the Consortium, staff (usually the CEPC director) review the form to ensure that the client meets the financial eligibility criteria. If not, the client is rejected.¹⁹
- If the client is financially eligible, the Consortium staff file a Notice of Limited Appearance (NOA) and obtain a Stay of Appellant Proceedings (Stay), which allows the Consortium time to evaluate the case.²⁰ The NOA enables the Consortium to have access to the “Record Before the Agency” (RBA), which includes the BVA decision and other information relevant to the veteran’s appeal.
- Consortium staff print a copy of the BVA decision from the Court website and simultaneously send the client a letter regarding next steps. (The BVA decision is typically available within one or two days after the notice of appeal.)
- The deputy director for placement then reviews the BVA decision for jurisdictional problems and to cull out cases that don’t present a viable claim (e.g., a pension claim rejected because there is no service connection.). He also reviews the list of client names to make sure that none appear on the Court website as having private counsel.
- The director of the CEPC (or, in a very few cases, the deputy director for placement or a contract screener) then reviews the BVA decision to identify errors that would warrant accepting the case.
- The RBA is then secured and reviewed by the lay advocate case screeners. The file is supposed to be available within 60 days of the Notice of Appeal but the process can take longer because the files are being converted to searchable electronic documents. Because of the delays in accessing the RBA and the fact that only two case screeners were available at the Consortium, a significant backlog for reviewing files exists. Interviews suggest that the backlog may delay review of a new PRF by three to six months, creating the need for additional stays before the Court.
- Once the review has been completed, the Consortium screeners prepare a detailed memo that is then reviewed by the deputy director for screening and/or the CEPC director in making the decision on whether to provide counsel to the veteran.
- If the decision is made that the case is not appropriate for referral, a detailed letter is written to the veteran explaining why the case has been rejected. These letters,

¹⁹ Policy Paper 4 addresses procedures for applicant grievances of this decision, but does not identify the formal process for this.

²⁰ Rule 5(a)(1) of the Court’s Rules of Practice and Procedure includes a special provision which allows the Consortium to obtain this stay. Court staff report that the Consortium sometimes must obtain multiple stays. Court staff further report that, private attorneys, in seeking to justify their requests for multiple stays, cite the Consortium’s practice of securing multiple stays.

which are based on the case screening memo, are written by the deputy director for screening or the CEPC director.

- If the decision is made to accept a case for referral, the CEPC director reviews and, as needed, revises the screening memorandum. Cases that present meritorious but complex jurisdictional or legal issues are referred to the DRC attorney. Approximately twenty cases are referred to the DRC annually.
- If the decision is made to refer the case to a PBR, the private attorney is mailed a substantial packet of materials, with a copy of the screening memo and other information about the case, information about the Court process, contact information for the mentor and Consortium staff, and copies of the *Veterans Benefits Manual* and the *Federal Veterans Laws, Rules and Regulations*.
- At the same time these materials are sent to the PBR, the appellant is sent a letter identifying the attorney who will be handling the case along with a retainer agreement. If the Consortium has requested two stays and the attorney has still not received the retainer, Consortium staff send a letter to the client explaining that they will close the case without necessary action by the client. The so called “dynamite” letter usually prompts action but additional staff follow-up is sometimes necessary.
- The Consortium staff track the case to ensure the PBR meets all necessary deadlines. The Consortium also receives email alerts about the case status from the Court which allow staff to ensure that the PBR is advancing the client’s case in a timely manner.²¹
- When the case is completed, staff send surveys to the attorney and the client to obtain their assessment and determine their satisfaction with the process and the deputy director for screening prepares a decision memo.

FINDING 10: The Consortium facilitates the provision of effective representation of pro se appellants before the Court.

Interviews with Judges and DVA staff indicate that the Consortium’s attorneys provide effective representation to appellants before the Court. The Court has also indicated its recognition of the Consortium’s competence by requesting amicus briefs from the Consortium on issues of significant importance for veterans law and by asking the Consortium to provide representation to appellants requiring expedited service to meet deadlines. Another indicator of the effectiveness of the PBRs is their “win rate,” the

²¹ However, the Consortium has very limited tools at its disposal to address situations when the PBRs do not effectively pursue the case. Consortium staff and Central Legal Staff both noted some concerns regarding pro bono attorneys who neglect their cases. Recent changes in the referral agreement give the Consortium more tools to address this problem. It is very important to provide veterans with competent counsel and the Consortium should be given all the necessary tools to address problems with individual attorneys.

percent of cases decided by the Court in which the appellant is represented by a program PBR. The win rate has consistently been in the 70%-75% range.²² Additionally, the Consortium has provided representation in cases that have had significant impact on veterans law.²³

FINDING 11: The Consortium's services have increased in tandem with increased appeals to the Court in recent years and have helped the Court reduce the number of pro se appellants at case closing.

The number of cases decided by the BVA has consistently increased since 2004, as have the numbers of appeals and pro se appeals to the Court. The CEPC has increased its services commensurate with these increased demands. For example, at the same time the number of pro se filings with the Court increased 5.8% from 2007 to 2008, the number of total cases processed by the CEPC increased 6.3% and the number of cases placed increased 11.5%. The Consortium was established in part to help reduce the number of pro se appellants before the Court. It has accomplished that goal. From 1999 to 2008 for example, the portion of the Court's cases that remained pro se at closure fell from 42% to 24%.

FINDING 12: The Consortium's case screening process does not utilize its limited staff resources to best advantage; it can also improve oversight of case screening decisions.

As described in more detail above, the screening process contemplates a chronological timeline in which each potential request is first analyzed for jurisdictional issues, then quickly reviewed in the context of the BVA decision, then analyzed in more detail by one of the CEPC lay advocates and finally reviewed by the CEPC director.

This process requires the involvement of many different people at specific stages of the review process and some staffers, such as the CEPC Director, are involved in reviewing every PRF received by the Consortium. Interviews also indicate that the CEPC director frequently reviews documents for each case at nearly every step of the screening process. This involvement seems to be a quality control measure. However, it creates several bottlenecks for applicants and can reduce the percentage of individuals who actually receive legal representation with their appeal at the end of the process. It also contributes to inconsistent results, as with the veterans whose persistence overturns an initial rejection of service from the Consortium. A more streamlined and efficient process in which case acceptance policies and procedures have been clearly outlined would allow the Consortium to effectively handle more PRFs each year.

²² Although this is comparable to the overall remand rate, it is assumed that the Consortium takes cases that are less likely to result in a remand than does the private bar, which concentrates on cases in which a remand is very likely and thus have a higher success rate.

²³ These include *Alpough v. Nicholson*, 490 F.3d 1352 (Fed. Cir. 2007), *Henderson v. Peake*, 22 Vet.App. 217, 221 (2008), *Reyes v. Nicholson*, 21 Vet.App. 370 (2007), and *Mayfield v. Nicholson*, 19 Vet. App. 103 (2005), affirmed 444 F.3d 1328 (Fed. Cir. 2006).

Equally significant, a more streamlined process would more quickly enable appellants to secure counsel and to develop the information needed for the mandatory conferencing sessions recently implemented by the Court. According to CLS staff, of the cases that go to conference, 55% end with a joint remand, avoiding the need for briefs and allowing the veteran to more quickly start the process of establishing his or her entitlement to benefits. Time is literally of the essence for many veterans, particularly those who are elderly. The Consortium process should reflect the need to reach the mandatory conference stage as quickly as possible in order to benefit the clients it is serving.

Recommendation III-12-1: The Consortium should conduct a systematic analysis of the case screening process and make appropriate modifications to improve this process. The implementation of this recommendation must be coordinated with those associated with Findings 14-18 below.

FINDING 13: The CEPC’s screening process has not evolved with the practice of law before the Court and may no longer serve as a sufficient resource for attorneys who rely on it to handle their cases.

The CEPC case screening staff includes two lay advocate case screeners and three attorneys – the CEPC director, the assistant director for screening and the assistant director for placement. (One screener position is now vacant.) These staff are skilled, committed to high quality work and are knowledgeable about veterans benefits law.

However, the demands on the case screening process are a major area of the Consortium’s operations that have been significantly altered by the evolution of the Court. Specifically, there was little case law when the Court was established; now the Court’s decisions are based on an extensive body of case law that has been developed over two decades. As a result, the Consortium’s analysis of cases and the screening memos need to reflect knowledge about the factual matters relating to the BVA’s decisions as well as the pertinent case law and legal issues that will be most salient for appeals before the Court. Within the DVA and at many VSOs the responsibility for screening appeals has been increasingly given to attorneys for this reason. In fact, the Consortium appears to be in a clear minority in relying on non-attorneys to perform this function with respect to cases being heard by the Court.

The need to enhance the legal capacities of the CEPC is highlighted by the quality of the case screening memos, which Policy Paper 14 describes as “a foundation block on which the program is built” and “a basic roadmap for the attorney assigned to litigate the case, including identification of the major issues.”²⁴

²⁴ The “Attorney” section of the website, which describes what the program provides “[i]f you are an attorney interested in our program,” states the screening memo provides a “comprehensive analysis of the appellant’s case as a guideline for the appeal.” Also, an entry in the “Attorney Training Information” section of the site states that “volunteer attorneys are quickly oriented to the case with a memorandum describing the facts and legal issues.”

The program's PBRs express varying perspectives about the screening memos. On one hand, most PBRs find a screening memo useful. For example, 89% of the LSC PBR survey respondents reported a "detailed screening *like that* prepared by the Consortium is essential for a pro bono attorney to develop the appeal" (emphasis added). The CEPC's attorney surveys at case closing indicate the screening memos are valuable. On the other hand, however, a significant number of PBRs reported in their responses to the LSC survey that the screening memo they received did not address key issues in the case they handled.²⁵

Moreover, interviews with the mentors as well as some members of the Consortium board and staff indicate that the CEPC screening memos sometimes do not reflect sufficient knowledge of relevant case law and/or do not sufficiently highlight the legal issues that are most pertinent to the case. Staff of the DVA general counsel's office (with whom Consortium PBRs have shared their screening memos) raised similar issues. In addition, these sources indicate that these shortcomings in the screening memos are not rare occurrences.

This problem results from a combination of factors. The non-attorney advocates lack the legal training and skills to consistently produce screening memos with requisite analysis of legal issues in response to the growing body of law in this area. Given the volume of work they face, they have limited opportunities to review recent Court decisions or to access training that would allow them to develop and maintain this additional expertise. And systems for the support, oversight, supervision and evaluation of case screeners need to be improved.

Recommendation III-13-1: The Consortium should enhance the systems for training, supervising, supporting and evaluating the work of case screeners.

Recommendation III-13-2: The Consortium should consider hiring attorneys as case screeners.

FINDING 14: The current structure and contents of the Consortium's case screening memos do not necessarily foster high quality representation of appellants by PBRs.

The shortcomings of the screening memos are especially problematic given that interviews revealed that some pro bono attorneys have used the Consortium's detailed screening memos as a crutch so that they did not undertake their own legal research on behalf of the veteran. Judges, the Court's Central Legal Staff and mentors all recounted experiences in which Consortium attorneys appeared to quote verbatim from the screening memo in advocating on behalf of their client. However, the Consortium does not expect PBRs to base their appeals solely on the screening memos. Instead, PBRs are expected to conduct their own analysis and research regarding the issues presented in the cases. The LSC survey of PBRs revealed that a significant portion of volunteer attorneys

²⁵ In response to the question "Please provide any comments you have about the type of screening memo you think would be most useful," 40% (6 of 15) of respondents indicated the screening memos did not identify significant issues in a case they handled.

appear to misunderstand the intended functions as well as the limitations of the screening memos: 35% of survey respondents indicated they thought the screening memo identifies all legal and factual issues that are significant to the appeal.

Interviewees offered three suggestions for improving the utility of the screening memos. First, as noted above, the CEPC should improve the legal analysis in the screening process to ensure the most significant legal issues are identified more consistently and reliably. Second, the Consortium must emphasize to PBRs that they cannot expect the screening memo to cover all relevant issues in the case. And third, the Consortium could change the format of these documents from a detailed narrative analysis to an outline of the most salient legal and factual issues. Interviewees opined that this would take less time to produce and would be more useful to PBRs since it would be shorter and more clearly highlight the key issues of the appeal. The PBR survey results indicate this could meet the needs of the Consortium's volunteer attorneys: 88% said a PBR "can develop an appeal using an outline of significant issues and access to an experienced mentor." An outline format also appears to be the approach used by DVA and other organizations who are routinely reviewing BVA decisions. This format might also allow the Consortium and others to more easily identify persistent errors and other issues that frequently provide a basis for challenging the BVA decision.

Recommendation III-14-1: The Consortium should ensure it informs PBRs that the screening memo will not identify all of the relevant issues of the appeals and that the PBRs must conduct their own research and analysis of the case to ensure they most effectively represent their client.

Recommendation III-14-2: The Consortium should assess the extent to which replacing the case screening analysis from a detailed memo format to an outline of the most salient legal and factual issues can better meet the needs of PBRs and use the CEPC's resources more efficiently.

FINDING 15: The Consortium needs to improve its systems for training and supervising its legal staff.

Interviews and the review of program documents indicate the CEPC lacks a range of systems that could improve the quality and effectiveness of its work. In particular, the CEPC:

- Has no system for identifying the training needs of staff.
- Does not conduct or make available ongoing training to ensure staff remain current with developments in veterans law and the Court's case law. Training that is provided is infrequent, conducted on an ad-hoc basis and lacks the depth and scope to ensure staff can maintain and upgrade their skills and knowledge.
- Lacks performance standards that specify expectations of staff.
- Has no formal systems for the ongoing evaluation of the effectiveness of the legal work conducted by individual attorneys or lay advocate screeners.
- Appears to lack a rigorous system for supervising and supporting the legal work of the CEPC staff.

Although the CEPC may perform training and supervision on an informal basis, there are no Consortium policies that would provide the guidance or framework for instituting training and/or supervision in a consistent, rigorous fashion. Moreover, because of the fragmented structure of the organization, no staff are invested with the authority to institute or perform these functions. Ultimate authority for evaluation and supervision of individual staff reside with the staff of their employing organizations.²⁶

Recommendation III-15-1: The Consortium should institute measures which identify the ongoing training needs of individual staff and which enable staff to obtain necessary training.

Recommendation III-15-2: The Consortium should implement systems for evaluating the legal work of the CEPC staff. These systems should identify specific expectations for legal staff as well as performance measures for evaluation.

FINDING 16: The Consortium’s systems for assessing the effectiveness and efficiency of the CEPC and its legal work need to be improved.²⁷

Interviews and the review of program documents indicate the Consortium lacks systems that would enable it to most effectively assess the quality and effectiveness of the CEPC’s operations and legal work. Key concerns include the following:

- Monthly reports generated by the CEPC and discussed at the monthly board meetings provide the foundation for the Consortium’s assessment of the CEPC’s work.²⁸ These reports have been in use for most of the Consortium’s existence. They have been little changed and their value has not been evaluated since they were first implemented. Interviews indicated that staff spend a significant amount of time preparing these monthly reports, at the cost of performing other functions that could be more useful to the organization. Interviews and assessments by the review team indicate that some of these reports may have limited utility.

²⁶ As discussed in Finding 17 below, there are similar issues related to the guidance, supervision and evaluation of the work conducted by the program’s mentors.

²⁷ In its comments on the draft report, the Consortium stated that it “does little or no legal work itself.” (Letter from Jeffrey Stonerock to Bristow Hardin dated October 22, 2009.) However, the Consortium indicates it has an attorney-client relationship with an appellant by filing a Notice of Appearance to obtain access to an appellant’s case file in order to screen the case. Moreover, the Consortium’s staff or consultants conduct a range of activities that constitute the provision of legal assistance. These include: (1) preparing and providing to the PBRs the screening memo, which among other things, as noted in Policy Paper 16, “provides a basic roadmap for the attorney assigned to litigate the case, including identification of the major issues;” (2) providing mentoring services to PBRs; and (3) the case work of the DRC (which comprised approximately 9% of the cases placed in 2008). A significant majority of the Consortium’s budget directly or indirectly finances these activities. All of these activities meet the definition of “legal assistance” contained in LSC’s *Case Service Handbook*.

²⁸ These reports provide data regarding program caseload and referrals, case placements, attorneys trained and awaiting cases, and related matters.

- The Consortium does not systematically collect and/or analyze a range of data that could enable it to assess the efficiency of the CEPC. These include data regarding the time individual staff spend conducting screenings, the time staff spend producing screening memos, the number of people that spend time processing and screening each case, and the time respective staff spend performing each of these different functions.
- The Consortium does not systematically collect and/or analyze key data that could enable it to assess and improve the effectiveness of its legal work. Such data include the specific legal issues raised in appeals, the issues raised in cases accepted and rejected, the geographic location of appellants' residences, and demographic information about appellants, including their race, gender, and primary language. In addition to providing information that the Consortium could use to assess and develop adjustments that could improve the CEPC's operational efficiency or reduce barriers to accessing its services, these data could also enhance the Consortium's ability to identify emerging legal trends and issues raised in appeals.
- The CEPC case management system and other data systems appear to lack the capacities that would enable program staff to readily compile and analyze the types of data identified above.
- Reports and data that the 2003 Application indicated were used for the analysis of the program's operations are not systematically compiled and shared with the Board. For example, the CEPC assistant director prepares "decision memos" which analyze the Court decisions in all appeals in which the Consortium screened the case, including those the Consortium accepted as well as those that were rejected because the case was deemed to lack merit or the appellant retained other counsel. These decision memos could be a source of very valuable information since they are designed to assess the extent to which the Court decisions are consistent with the issues and analysis in the screening memo and the arguments in the PBR attorney's brief (for cases that were accepted), as well as the CEPC assistant director for placement's expected outcome for the case. Interviews indicate that the existence of these memos is little known outside of the CEPC. Also, it appears that the information in decision memos is not compiled or analyzed in any systematic way. Nor does it seem that these data are systematically shared with the board, the mentors or other Outreach and Education Component staff to inform and improve the work of the Consortium's training, case screening, staff evaluation or mentoring activities.

In addition, when a case is completed surveys are sent to PBRs and appellants to obtain information about their satisfaction with the case. The attorney survey also seeks specific information about the value of the screening memo, training and training materials, and mentoring as well as the amount of time each attorney spent on the case and his or her interest in accepting additional cases. Although the results of these surveys could be very useful, it appears these data are not

systematically compiled and analyzed; nor are they shared with the board. It is uncertain how these data are otherwise systematically used to implement improvements in the program's operations. Further, the use of paper surveys rather than on-line or similar survey tools can reduce response rates and limit the ability to easily and efficiently compile and analyze the survey results.

Recommendation III-16-1: The Consortium should identify the types of information that would enable it to assess the effectiveness and efficiency of the CEPC's operations and establish systems to compile and evaluate those data.

Recommendation III-16-2: The Consortium should ensure that its case management systems and other data management systems have the capacities needed for staff to compile and analyze the data sets and information to manage and evaluate the Consortium's operational effectiveness.

FINDING 17: The Consortium's "one attorney, one case" policy creates unresolved tensions in the program's case screening decisions.

The Consortium's general case acceptance policy calls for each newly trained attorney to receive a case before any trained attorney can be assigned a second case (one attorney, one case).²⁹ There are case-by-case exceptions to this policy, but the CEPC director is expected to discuss these with the board. This policy is designed to ensure that as many volunteer attorneys as possible obtain experience in handling a case before the Court. This objective is itself associated with a major Consortium objective of expanding the pool of attorneys across the country with some knowledge of and interest in veterans law. It also reflects an assumption that, in nearly all cases, first-time attorneys can handle Consortium cases competently, even cases that may be complicated, because these PBRs have the support of an experienced and skilled mentor. (Note that especially complicated cases are handled by the DRC.)

However, staff of the CEPC and others noted that the one attorney, one case policy can limit the placement of cases with "repeat" attorneys who may have special expertise or be otherwise especially suited to handle a particular case. In this view, although these cases may not be so complicated that they require the attention of the DRC, prior experience would lead CEPC staff to believe that a particular attorney may have expertise that will enable them to provide better representation than a first-time attorney or that the use of a repeat attorney may expedite the case placement process.

It is clear that the one attorney, one case policy does increase the number of attorneys with some experience in veterans law and that in the great majority of cases the program's training, resource materials and the support of a skilled mentor enable PBRs to competently handle their appeal. However, it also seems that in an undetermined but small number of cases the use of a repeat attorney might result in better representation for an appellant, the Consortium's most important goal. Providing the CEPC with more

²⁹ Policy Paper 14 outlines the parameters of this policy.

discretion in this regard could ensure that appellants have PBRs with exceptional experience and expertise, if and when these are needed.

Additionally, greater use of repeat attorneys could reduce the program's costs for training and resources materials.³⁰

Recommendation III-17-1: The Consortium should assess and clarify the one attorney-one case policy to ensure that it does not limit the CEPC's ability to assign cases to PBRs with specialized expertise, when appropriate.

FINDING 18: The Consortium's Direct Representation Component (DRC) performs effective legal work.

Under the terms of the grant the DRC handles at least 20 cases per year. The DRC has met this requirement every year. Policy Paper 10 specifies that:

In general, cases referred to the Component will be those requiring immediate intervention by a lawyer to assure adequate protection for an appellant's rights, or presenting unusually challenging or complicated issues, including cases where a potential legal issue is unclear yet the circumstances strongly suggest an injustice that should be remedied if legally feasible.

Interviews with Court staff, members of the Consortium board, mentors and Consortium staff indicate that the DRC performs competent legal work. The DRC attorney is experienced in veterans law and is supervised by the PVA Deputy General Counsel and Associate General Counsel, who review all of the DRC briefs. The DRC's oral arguments are typically conducted by the PVA Deputy General Counsel.

As with the work of mentors, the DRC's activities are not overseen or evaluated by the Consortium.

Recommendation III-18-1: As the Consortium plans and implements organizational restructuring (see Performance Area Four), it should establish mechanisms to ensure the DRC's work is effectively incorporated into the program's legal work supervision and oversight systems.

Private attorney involvement.³¹

³⁰ However, it was noted that attorneys appearing regularly before the Court would need to pay an additional bar membership fee which is currently waived for those appearing only once.

³¹ This LSC Performance criterion (Criterion 3 of Performance Area Three) focuses on a program's effectiveness in integrating private attorneys in its work. This section of the report discusses the Consortium's work in recruiting, training, and supporting PBRs with mentoring, resource materials and other services.

FINDING 19: The Consortium recruits a sufficient number of PBRs to meet the demands for its services.

The Consortium has never encountered difficulty recruiting a sufficient number of volunteer attorneys to represent pro bono appellants. Instead, the Consortium has needed to limit its recruitment efforts to ensure that the volunteers it does recruit have the opportunity to receive a case within six months after they have been trained.

FINDING 20: Consortium PBRs rate highly the quality of the program's case assignment process and its training, resource materials, and mentoring support.

PBRs must participate in a one-day training seminar on veterans law before they can accept a case. (A very small number receive training via a training DVD rather than the in-person seminar.) Training participants also receive a 100-page training outline that covers key veterans law issues. Once they accept a case, the PBRs receive a copy of the NVLSP Veterans Benefits Manual (in hard copy and CD-ROM formats) and additional guidance materials. PBRs are also assigned a mentor, who provides PBRs support and advice as they handle the appeal.

LSC obtained PBRs' assessments of these Consortium services by surveying all PBRs whose cases were closed in 2008.³² Survey responses indicate that these training and support services are valuable to PBRs.

- Similar questions focused on the quality of the training and training materials, asking PBRs to rate, on a 1-to-5 scale (1=not at all; 5=fully), "the extent to which" these services "provided the initial knowledge of veterans law" the PBRs needed. Seventy-six percent (76%) of respondents rated the training highly (i.e., a 4 or 5 rating) and 91% gave the training materials a high ranking.
- Ninety-eight percent (98%) said the Veterans Benefits Manual was a valuable resource in the development of their appeal.
- Eighty-five percent (85%) stated the mentor provided essential assistance the PBR needed to effectively represent their client.
- Ninety-eight percent (98%) reported the mentor was responsive to their questions and information requests.

Additionally, 89% of survey respondents stated the program's case assignment system worked well.

PBRs' assessments of the different aspects of the Consortium's operations are reflected in their overall ratings of the Consortium's services: 75% indicated they were very satisfied with the Consortium's services overall.

³² PBRs closed 189 cases in 2008. Because of incorrect email addresses (caused in part by attorneys leaving their firms after they closed the Consortium case), the survey could only be sent to about 160 of these attorneys. Forty-eight (48) attorneys completed the survey. The 30% response rate is average for on-line surveys.

The attorney surveys the CEPC conducts at case closure also reveal PBRs rate highly the Consortium's services.

The PBR survey and some interviews indicated that new resources would be useful supplements to the resources and mentoring support now available to PBRs. These include: sample briefs, short tutorials about common errors in DVA decisions that can warrant remands; a short tutorial about the Court's basic rules and procedures; FAQs about the basic steps of handling a Consortium case; and information about trends in the rulings of Court decisions.

Some of these resources and information may already be available in different sections of the voluminous materials the Consortium provides PBRs. However, they may not be readily accessible to PBRs and thus are not as effective as they otherwise might be.

Recommendation III-20-1: The Consortium should explore the value of developing new resource materials or adapting existing materials to enhance PBRs' ability to readily access information that will enable them to most effectively represent their clients.

FINDING 21: Improvements in the Consortium's website would more effectively and efficiently facilitate attorneys' participation in the program and enhance the quality of PBRs' representation of appellants.

The types of shortcomings that limit the utility of the Consortium's website to appellants (see Finding 8) similarly undermine the usefulness of the website for PBRs. In particular, the website's content, usability, consistency and appearance need to be improved. The upgrades needed to better serve veterans must be accompanied by parallel improvements to better address the needs of PBRs.

LSC's survey of PBRs revealed that a substantial number of volunteer attorneys would value these resources. For example, although the large majority of PBRs (81%) stated that a comprehensive day-long training was their first preference for obtaining training, nearly two-thirds (64%) said that self-study using on-line resources or DVDs was their first (12%) or second preference (52%) for receiving training.

Also, large majorities of PBR survey respondents indicated that having on-line access to the types of resource materials identified in Finding 20 (see above) could improve their effectiveness. The following percentages indicated the specified on-line resource would have "significantly" or "very significantly" enhanced their ability to represent their client:

- Sample Briefs: 98%
- Short tutorials about common errors in DVA decisions that can warrant remands: 85%
- A short tutorial about the Court's basic rules and procedures: 71%
- FAQs about the basic steps of handling a Consortium case: 56%
- Trends in the rulings of Court decisions: 51%

LSC recognizes that the training and resource materials provided PBRs require a significant investment of program resources. These materials have a significant economic value and are intended for the exclusive use of PBRs when they handle a Consortium case. They are not intended for use by practitioners who are not Consortium PBRs. The Consortium's website can include password protections to ensure these materials are available only to active PBRs.

Recommendation III-21-1: The Consortium should upgrade its website to ensure the site has the content, appearance and functionalities that enhance PBRs' ability to participate in the program and represent appellants. These upgrades should incorporate results of the PBR survey as well as the lessons learned from the operations of LSC-funded statewide websites around the country. (LSC can assist the Consortium in this endeavor.)

FINDING 22: The Consortium does not systematically assess the training needs of the PBRs.

The Outreach and Education Component updates its trainings based on its knowledge of changes in veterans law and its judgment of the information the PBRs need to provide appellants with high quality representation. The Outreach and Education Component collects training evaluation forms from training participants. Also, the attorney surveys conducted by the CEPC at case closure obtain information about the quality of the training and how it might be improved. Further, in their work with PBRs the mentors obtain insights about the effectiveness of the training. However, the Consortium lacks systematic processes for compiling and analyzing the data from these different sources. Although CEPC attorney surveys and the PBR survey conducted by LSC indicate PBRs generally rate the trainings highly, the Consortium might improve the training program by systematically analyzing the data it collects.

Recommendation III-22-1: The Consortium should establish processes to systematically assess the training needs of PBRs and to ensure the training program most effectively addresses those needs.

FINDING 23: The Consortium lacks consistent guidance, oversight and evaluation of the mentoring function.

In 2009 the Consortium had 13 mentors. These included the director of the Outreach and Education Component, seven other NVLSP attorneys, the DRC attorney, three other PVA attorneys, and a contract mentor formerly employed by DAV. As indicated below, the review team interviews and the PBR survey results indicate the program's mentors are skilled and helpful to PBRs.

However, guidance for mentors and the oversight and evaluation of their work is only ad hoc. There is no formal description of a mentor's duties, nor are there protocols or similar resources that would provide guidance to mentors and provide consistency in the performance of their work. Further, there are no standards by which mentors are

evaluated, nor are there any systems for supervising or evaluating contractors in their role as Consortium mentors. Instead, mentors are supervised and evaluated by their supervisors at the organization for which they work. For example, the mentoring activities of staff employed by NVLSP are evaluated as part of their work as NVLSP employees, not as Consortium mentors.

Recommendation III-23-1: The Consortium should develop guidance policies or protocols that set forth mentors' responsibilities and provide guidance for their work.

Recommendation III-23-2: The Consortium should implement systems that provide for the supervision and oversight of mentors.

Recommendation III-23-3: The Consortium should implement systems for evaluating the work of mentors. These systems should identify specific expectations for mentors as well as performance measures for evaluation.

Other program services to the eligible client population.³³

FINDING 24: The Consortium lacks mechanisms to systematically monitor, supervise and evaluate the information and services provided veterans on matters not directly related to appeals before the Court.

The Consortium receives a large number of calls and correspondence from veterans seeking help that is not directly related to veterans' appeals before the Court. Because of their concern about these veterans' circumstances, Consortium staff seek to provide them the assistance and information that might enable them to resolve their legal problems. This is commendable work by Consortium staff, given the limited resources available in general to veterans. However, no standards appear to govern how the Consortium will respond to these requests and the extent to which limited Consortium resources should be diverted to this need. In addition, some of this work could be beyond the scope of the Consortium's work as specified in P.L. 102-229.

The program does not compile systematic data about the number of calls, letters and email it receives from veterans seeking such assistance, the substantive issues they raise or the types of assistance they seek. Interviews indicate the CEPC typically receives at least twenty phone calls each day. Up to six different staffers may respond to these calls.

Staff responding to these service requests have little or no formal training about how to respond to these inquiries; there are no protocols or guidance about the information staff should provide; and there appears to be little formal supervision or oversight of this work. The Consortium does not have materials with legal or referral information that staff could

³³ This LSC Performance Area criterion (Criterion 4 of Performance Area Three) addresses the program services in addition to direct client representation that are designed to help low-income people address their legal needs and problems.

provide veterans seeking this assistance. The Consortium does not systematically compile or analyze information about the type of problems veterans identify, the staff resources devoted to responding to those inquiries, or the information that is provided in response to these requests. Further, those requests are not recorded in the program's case management system nor tracked for the Court or other Consortium partners, although this role is referenced in the Consortium's own reports and program materials. This lack of oversight of this service could lead to the inadvertent provision of legal advice by non-attorney staff without appropriate supervision

Recommendation III-24-1: The Consortium should decide whether to use program resources to respond to inquiries from veterans that do not involve appeals before the Court. If the Consortium decides to devote some program resources to these activities, it should identify the level of service that should be provided to those individuals and clearly communicate this information to staff and to the general public.

Recommendation III-24-2: If the Consortium decides that substantial program resources will be devoted to providing services to veterans not directly related to their appeals, it should determine whether these activities should be supported with Congressionally-appropriated funds or donated funds.

Recommendation III-24-3: The Consortium should compile and analyze systematic data regarding (a) the number of service requests received on issues unrelated to a veterans' appeal and type of assistance these veterans seek and (b) the staff time spent responding to these inquiries and the specific type of information and assistance provided in respond to these inquiries.

Recommendation III-24-4: The Consortium should provide training and support, develop protocols and guidance materials, and provide appropriate oversight and supervision to ensure staff most effectively and efficiently respond to veterans contacting the program for assistance on matters other than appeals before the Court.

Recommendation III-24-5: The Consortium should identify or develop information and resource materials that callers can access – e.g., materials staff send to callers, links on the Consortium's website – which might help them address their problems.

PERFORMANCE AREA FOUR. Effectiveness of governance, leadership and administration.³⁴

As detailed below and elsewhere in this report, notwithstanding the Consortium's success in achieving its core mission of ensuring that pro se appellants receive effective

³⁴ This Performance Area notes that programs "should be led and managed effectively with high quality administrative systems, procedures and performance." It also identifies ways in which "good leadership and strong internal operations increase the likelihood of effective services, and decrease the risk that effective program services will be adversely affected by organizational problems." LSC Performance Criteria, p.33f.

representation before the Court, fundamental features of the Consortium's organizational structure weaken the program's governance, leadership and administrative capacities, limit its overall effectiveness and efficiency and hinder its ability to capitalize on and address the new opportunities and challenges it confronts. Accordingly, LSC's most important recommendations call for the Consortium to overhaul this structure by expanding the board's membership, hiring an executive director, and employing and managing its staff and contractors. The Consortium cannot make appropriate improvements unless and until these recommendations are implemented. As noted previously, some members of the Consortium board had considered these steps prior to the LSC site visit. At its first meeting after the conclusion of the site visit, the Consortium board passed resolutions to begin implementing these recommendations.

Board Governance.

FINDING 25: The Consortium's board lacks the capacities to fully perform its oversight and policymaking functions.

The Consortium board lacks the composition, capacities and resources required to perform the functions that are the appropriate purview of organizational boards. For example, although the four organizations have extensive experience representing veterans before the Court, the absence of viewpoints beyond those groups limits the board's vision and range of views. The representatives of the private bar who have served as the board chairs have provided invaluable perspectives, but their impact is limited because they are only one of five board members. Also, a variety of other organizations provide services to veterans and thus may provide important insights on how to serve these populations. These include veterans of the wars in Iraq and Afghanistan.

In addition, there is no gender or racial diversity within the Board that mirrors the gender and racial diversity within the client population served by the Consortium. Further, some board members have served on the board for many years; other seats are filled on a rotating basis without consistent representation.

The Consortium has never conducted board training and most of its members from the founding organizations have had very limited experience serving on boards.

Additionally, without an executive director the board lacks the information and resources it needs to effectively establish organizational goals and objectives, develop and oversee policies, and evaluate the organization's effectiveness and achievements. Moreover, the absence of an executive director forces the board to spend much of its time and energies managing the organization's ongoing operations. However, the board is not constituted or structured to perform this task. This point is discussed in Finding 29 below.

Recommendation IV-25-1: The Consortium should expand its board, incorporating the representatives of the private bar and other constituencies that can ensure that the

Consortium board has a range of perspectives that can maximize its effectiveness and efficiency.

Recommendation IV-25-2: The Consortium should conduct board training to help members understand the scope of the responsibilities and functions and to develop the skills required to perform these functions.

FINDING 26: The Consortium’s board structure can create inherent conflicts.

As noted above, the board structure was designed in part to ensure the Consortium’s operations did not conflict with the institutional interests of the founding member organizations. This was deemed necessary to create the program. Four of the five members of the Consortium’s board represent one of these organizations. As a result, these board members’ commitment to the Consortium’s interests may conflict with their commitment to the interests of the organizations they represent.

The Consortium’s operational practices also create potential conflict issues. For example, all of the Consortium’s work is conducted by individuals who are employees of one of the member organizations. Also, a significant amount of program resources are expended to obtain training materials from one of the member organizations. Because of these patterns and practices, policy decisions regarding the Consortium’s staffing and delivery structures have financial consequences for the organizations represented by some board members.

The Consortium does not have any written policies that might address these potential conflicts.

LSC and the Court approved the Consortium’s organizational structure when the program was established. Congress was informed about this and voiced no objections to it. Moreover, since that time neither LSC nor the Court has indicated this structure was problematic. However, because of the evolution of the Court, the maturity of the program, and changes in the environment in which the Consortium operates – in particular its status as a stand-alone nonprofit and the impact of the provisions of the Sarbanes Oxley Act (P.L. 107-204) and new IRS 990 requirements – these potential conflicts should be addressed.

Recommendation IV-26-1: The Consortium should develop written conflict of interest policies that ensure the Consortium, its board and its staff are free of any real or perceived conflicts of interests.

Leadership.

FINDING 27: The Consortium’s organizational structure impedes the development of effective leadership.

The absence of an executive director undermines the development of essential program leadership. The directors for the CEPC and the Outreach and Education Component are recognized for their expertise in veterans law and the Court, but neither is vested with the authority to provide leadership for the entire organization. The current board chair has contributed essential leadership and performed a range of activities that have helped the Consortium fulfill its mission despite the structural problems that hinder the organization's effectiveness and efficiency. His predecessor performed a similar role. However, the executive director, not a volunteer board chair, should be the locus of an organization's leadership.

This shortcoming is addressed by Recommendation IV-28-1, below.

Overall Management and Administration.

FINDING 28: The absence of an executive director undermines the quality and efficiency of the program's management, administration and operations.

A wide range of organizational shortcomings identified elsewhere in the report are substantially caused or exacerbated by the absence of an executive director. There is insufficient capacity to effectively perform functions such as, but not limited to: providing the board with the resources and support it needs to perform its essential functions; setting program goals and objectives and evaluating progress toward them; analyzing the legal needs of appellants and the training and support needs of PBRs; assessing and overseeing legal work systems; supervising and evaluating staff and contractors; identifying and implementing needed technology systems; and ensuring necessary coherence, coordination and communication within the organization.

In the absence of an executive director, the program's board has functioned as a collective executive director for the Consortium. This burden has largely fallen on the board chairs, whose extensive contributions have been integral to the program's success. Indeed, absent the board chairs' efforts, the Consortium's achievements would have been far less. The Consortium has been fortunate to have board chairs with the commitment to the organization's mission and the time and skills required to provide key leadership and perform essential tasks. However, the demands on the board chair are unwarranted and unsustainable, have required prodigious contributions of time,³⁵ and are an inefficient use of the chair's skills and time. In essence, the absence of an executive director results in the board trying to perform roles for which it is ill-equipped and prevents it from effectively performing its most important functions.

Recommendation IV-28-1: The Consortium should hire an executive director with appropriate skills to manage and oversee all of the Consortium's essential operations, including the operations of the CEPC, Outreach and Education Component, and the DRC.

³⁵ For example, in 2008 the time the board chair devoted to his work with the Consortium was equivalent to \$130,000 in billable hours for his firm.

FINDING 29: The absence of staff limits the Consortium’s operational effectiveness and efficiency.

As noted above, all of the Consortium’s staff are employed by and formally evaluated by staff of one of the member organizations. As a result, different Consortium employees can have varying compensation packages, are affected by developments unique to different member groups,³⁶ and are governed by different evaluation and supervision systems. Staff are ultimately accountable not to the Consortium but to their employing organization. For example, the directors of the CEPC and Outreach and Education Component are not supervised, and have never been formally evaluated by, the Consortium board. Instead, they are supervised and evaluated by staff of their employing organizations. Similarly, the work of mentors and similar contractors is not overseen by and accountable to the Consortium board. Instead, they are overseen by staff of their employing organizations. Overall, the current staffing system limits the Consortium’s ability to effectively supervise and ensure the accountability of program staff.

Recommendation IV-29-1: The Consortium staff should be employed, supervised and evaluated by the Consortium not the member organizations. Additionally, work performed under contract with the Consortium should be supervised and evaluated by Consortium staff.

FINDING 30: Better use of technology would enhance the Consortium’s overall effectiveness and efficiency.

Other findings in this report highlight some of the limitations of the Consortium’s technology systems. Findings 9 and 22, respectively, discuss the shortcomings of the appellant and attorney sections of the Consortium website. Finding 17 notes the shortcomings of the program’s case management and other data systems. Finding 17 also notes the inefficiencies of using paper surveys to obtain PBRs and appellants’ assessments of their experiences with the program.

Further, as noted above, when PBRs are assigned a case the Consortium mails them a substantial amount of resource and guidance materials. Staff time and mailing costs could be reduced if some of these materials were made available to PBRs on a password-protected basis on the Consortium’s website.

The Consortium’s operational effectiveness and efficiency could be enhanced by better use of available technologies in these and other areas.

Recommendation IV-30-1: The Consortium should conduct a comprehensive analysis of its technology systems, identify how better use of technology can improve its

³⁶ For example, in May 2008 PVA instituted a week-long furlough of all employees as a cost-savings measure. Consortium staff employed by PVA, but not Consortium staff employed by other organizations, were required to participate in the furlough.

operations, and develop a plan to obtain the technologies required to achieve necessary operational improvements.³⁷

Financial administration and Human resources administration.

FINDING 31: The Consortium's financial and human resources systems may not meet the organization's needs most effectively and efficiently.

Because of the organization's structure, the financial administration functions have been performed under contract. Until recently these were performed by staff of NVLSP; now they are performed by an independent financial administrator. Most of the human resources work has been conducted by the member organizations, which perform these functions for the respective Consortium staff who are their employees. Some human resources functions have been handled by the financial administrator.

Given the range of changes that are expected in the Consortium's operational structures, the LSC review team did not analyze the program's financial and human resources functions. As part of an overall organizational and operational restructuring, the Consortium will need to analyze its needs in these areas and develop appropriate systems to effectively and efficiently perform these functions. LSC will work to review and provide input into the Consortium's work in this regard.

It should be noted that the Consortium's 2007 Audit Report provided recommendations to the grantee's board. The Consortium should consider these in the development of its financial systems.

Interviews indicated that the demands on staff time and staffers' commitment to aiding veterans may result in staff not being appropriately compensated for the time they work.

Recommendation IV-31-1: The Consortium should extensively analyze its needs for financial and human resources administration and develop systems that address those needs. These activities should incorporate the input of resources with appropriate expertise, including LSC.

Recommendation IV-31-2: The Consortium should implement measures to respond to the recommendations of the 2007 Audit Report.

Internal communication.

FINDING 32: The Consortium's organizational structure impedes effective communication within the organization.

³⁷ LSC's staff and the LSC publication *Technologies That Should Be in Place in a Legal Aid Office Today* could be useful resources to the Consortium in this area.

In some areas, the Consortium's informal internal communication systems work effectively. For example, in consultation with each other and the board, the directors of the Outreach and Education Component and the CEPC ensure appropriate numbers of PBRs are recruited and trained to ensure appropriate numbers of volunteer attorneys are available to meet the demands for the program's services. In other respects, however, communications systems that could enhance the Consortium's operational effectiveness do not exist. This problem is highlighted by the absence of mechanisms that would enable:

- Mentors to provide appropriate input to the training component regarding the ways the training function might best address PBRs' needs.
- Mentors to provide appropriate feedback to the CEPC about how the screening memos might be improved.
- Case placement staff to provide appropriate input to the training component regarding the ways the training function might best address PBRs' needs.

These and other shortcomings of the Consortium's internal communications are inherent in the program's organizational structures, in particular the fragmentation of the program's operations into autonomous components, the absence of an executive director, and the absence of effective formal oversight and evaluation of the contractors who perform a significant portion of the program's work.

Recommendation IV-32-1: As it implements the recommendations for organizational restructuring, the Consortium should develop systems that ensure effective and efficient communication among the staff and contractors who perform the program's work.

General resource development and maintenance.

FINDING 33: The Consortium secures the financial resources it needs to support its operations.

Congressional appropriations provide nearly all of the Consortium's funding. Federal funds are supplemented by a relatively small amount of funds in donations from individuals as well as law firms that contribute their EAJA fees to the organization. Consortium staff do not conduct the program's government relations work; this is performed on a pro bono basis by staff of Baker Botts, L.L.P., the board chair's firm.³⁸ It is uncertain how long the firm will provide this support.

Throughout its history, the Consortium has received the amount it has requested from Congress. In some years, the Congressional appropriation has exceeded the Consortium's request. Despite this success, the Consortium must implement steps to ensure continued Congressional support for the program. In the future the Consortium may need to develop and implement strategies to secure other funding sources although that is less essential for the organization at this time.

³⁸ Until 2005 this work was performed by the Consortium's first board chair.

To secure its funding, the Consortium should ensure Court officials understand and recognize the importance of its operations. Interviews reflected some concern that the new generation of judges may be less familiar with the Consortium than their predecessors. It was suggested that Consortium board and staff members consider ways to provide an annual overview on program services to the Court.

Recommendation IV-33-1: The Consortium should ensure it has ongoing government relations capacities to maintain necessary Congressional support.

Recommendation IV-33-2: The Consortium should ensure the Court’s judges are adequately informed about its functions and services.

FINDING 34: The Consortium mobilizes substantial in-kind contributions to support its work.

The Consortium generates substantial resources in the form of in-kind support from member organizations and the private bar. For example, the 2007 Annual Report (the most recently available), indicated that the member organizations contributed personnel and in-kind support valued at \$388,000 and the value of the contributions from PBRs totaled \$3.1 million.³⁹

Coherent and comprehensive delivery structure.

FINDING 35: The Consortium’s delivery structure lacks necessary coherence.

Notwithstanding the Consortium’s notable achievements, its delivery structure can be improved in a variety of ways. Because these have been discussed elsewhere in the report, they need not be repeated here. To develop the necessary coherence and integration, the Consortium will need to implement the structural changes recommended above.

Participation in an integrated legal services delivery structure.

FINDING 36: The Consortium can more effectively capitalize on a range of resources that could improve its services to veterans.

As noted above, large numbers of veterans contact the Consortium seeking information or assistance that is outside the organization’s purview. Veterans may need assistance to obtain VA benefits before the case has been decided by the BVA or may need assistance on a variety of other issues – e.g., family, consumer, housing – unrelated to VA benefits. The Consortium does not have sufficient knowledge of or relationships with

³⁹ This does not include any costs for which the organizations are reimbursed with Consortium funds.

organizations – such as legal services programs – that could provide the assistance that might address these veterans’ legal needs.

Similarly, the Consortium offers an important service that is little known or recognized within the broader legal aid community, including local pro bono programs operated by LSC grantees around the country. Its staff leaders have tremendous expertise in serving veterans and could be important resources for legal aid programs that include a significant veteran population within their service area. They have performed an important function in encouraging certain law school clinics to become involved in this area, but have not yet undertaken steps that would bring them in contact with the national legal aid community. The LSC team believes that such efforts could contribute to improved legal advocacy for low-income veterans who may have a future need for Consortium services.

Recommendation IV-36-1: The Consortium should identify and forge effective relationships with organizations that provide services to veterans who contact the Consortium but whom the Consortium cannot assist. The entities include, but are not limited to, organizations that provide legal services to low-income people.⁴⁰

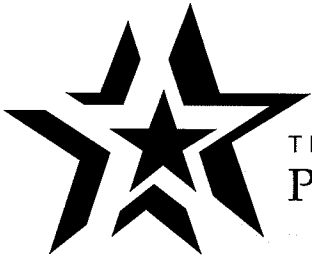
⁴⁰ LSC staff can work with the Consortium to facilitate this.

LSC – Office of Program Performance

Program Quality Report
Veterans Consortium Pro Bono Program
(Recipient Number: 309686)

APPENDIX

Grantee's Comments on Draft Report



THE VETERANS CONSORTIUM
PRO BONO PROGRAM



Bristow Hardin
Legal Services Corporation
3333 K Street, NW, 2nd Floor
Washington, DC 20007

October 22, 2009

Dear Dr. Hardin:

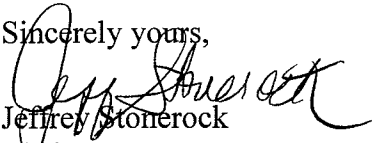
On behalf of the Executive Board of the Veterans Pro Bono Consortium, let me express our sincere appreciation for the effort that you and your team put into the Draft Program Quality Report. We appreciate that we are unique in many ways among the organizations that LSC supports, and we know our differences complicated your efforts. Even so, the draft report includes many insights that will make our program better, and for that we are grateful.

We also thank you for the many kind words about our program. From the Consortium's inception, we have had a singular focus -- to provide a lawyer on a *pro bono* basis to every qualifying appellant at the Court of Appeals for Veterans Claims who filed an appeal without counsel. We believe that we have achieved this goal 100% of the time. For 17+ years, we have contacted every *pro se*-filing veteran and provide every qualified individual who in reply requested a *pro bono* lawyer. We have been blessed with stable leadership and staff, adequate funding from Congress, and an abundance of motivated, talented lawyer-volunteers.

We are, however, far from perfect and recognize that, as is true with any organization, there are opportunities for improvement. We hope that the advice in the draft report will help us in a variety of ways. Perhaps it will help us be more efficient with taxpayer dollars. Perhaps it will help us free our employees from some routine tasks and allow them to focus on higher-value efforts. Perhaps it will make it easier for veterans to access our services. Perhaps it will help us to achieve our ultimate objective, which is to reduce even further the number of appellants who remain *pro se* through the conclusion of their appeals.

Attached to this letter please find our comments on the draft report, which we hope help to improve your final report. If you have questions or comments, please contact me.

Sincerely yours,


Jeffrey Stonerock
Chair

ATTACHMENT

Comments to the Draft Report

We offer only substantive or contextual comments. We did not view it as our place nor as productive to wordsmith or otherwise edit the report or to address factual discrepancies that do not distract from the substantive value of the draft report.. If we do not mention an area of the draft report, then we have no material comment to it, but our lack of comment does not mean that we either agree or disagree with it. Though we disagree with the wording of some of the findings, we choose not to suggest alternative wording, instead focusing on the value that we can derive from the narrative support for such findings. The draft report in places characterizes aspects of the Consortium as something less than effective; and we respectfully disagree, to the extent that such comments may infer that the Consortium has not accomplished or cannot accomplish its mission.

Notwithstanding our comments, please be assured that the Board will consider every finding and recommendation and glean from them ways to improve the Consortium.

Introduction

Second Paragraph, Page 1 -- "designed to ensure that LSC grantees are providing the highest quality legal services."

Many of our volunteer attorneys are from America's top law firms, and all of our volunteers provide quality legal services, but we suggest limiting that statement to the highest quality pro bono services. Over the life of the Consortium, and in many cases due to its efforts at training volunteers, a substantial veterans-law bar has evolved, and many of its lawyers do fine work. Please note, however, that, once a case is assigned to a volunteer lawyer, the Consortium does little or no legal work itself; rather, it facilitates the furnishing of legal assistance by our volunteer lawyers.

Program Overview:

Fourth Paragraph, Page 2 -- The RETC abbreviation.

There are two components, Outreach and Education, each headed by Meg Bartley. The use of RETC does not detract, however, from the substance of the report.

Last Paragraph, Page 2 -- The Report could be read to indicate that the members of the Veterans Consortium Pro Bono Program (Program, Consortium or PBC) have competing interests.

While it is true that some members of the Consortium competed for portions of the original grant, and while it is true that the Consortium members compete within the veterans community for membership, the members of the PBC have worked together successfully since the creation of the Consortium. At present, we do not know of any significant competing interests among members of the Consortium. All of the veterans service organizations in the Consortium agree that the it should (1) facilitate provision of high quality *pro bono* representation for appellants before the CAVC; (2) adhere to the

statutory intent of Public Law 102-229; and (3) continue to refrain from becoming involved in policy issues, because it is not a VSO.

First Paragraph, Page 3 -- “to protect the institutional interests”

The organization was not so much to protect the constituent organizations as it was consistent with their institutional interests.

Last Paragraph, Page 3 -- Baker Botts, L.L.C.

Baker Botts L.L.P.

Second Paragraph, Last Line, Page 4 -- “despite the awkward work relationship”

Delete this phrase or consider “unique” instead of “awkward.” Granted, the relationship is different, and the Board is improving it, but it has functioned well and allowed for mission-accomplishment for 17 years.

Last Paragraph of this Section, Page 5 -- the Consortium’s board has taken various actions.

While the board may have reached these decisions without the benefit of the interaction with your LSC team working toward preparing this draft report, the interaction of the board and your team no doubt facilitated the speed and form of the board’s action.

Finding 1

The Report concludes that the Program does not conduct formal analyses of the needs of the population it serves.

The population to be served are those appellants who have appealed *pro se* to the CAVC, and the only need the Consortium is funded to address is the need for a qualified, well-trained legal representative to represent the appellant before the CAVC with regard to the VA decision that the appellant has appealed. The population that the Consortium serves may have many other needs, but they are beyond the scope of the Consortium’s mandate.

As the draft report states, a body of case law has developed since the Consortium began; the CAVC has created it. This body of case law, however, does not change the need of *pro se* appellants for lawyers to represent them.

While the Consortium does not analyze the “most pressing legal needs of its constituency,” such analysis is unnecessary. The Consortium members are the leading organizations representing veterans’ interests before the VA. As such, they are at the cutting edge of legal trends relevant to the Consortium’s work. Likewise, the Consortium’s mentors are experts and active practitioners in veterans law, and so the Consortium’s volunteer lawyers have access to advisors well-informed of developments in veterans law.

We concur with an interpretation of Finding 1 that points to the prospect that the Consortium board can make better use the information collected by the CEPC and RETC.

Recommendation I-1-1

As stated in the discussion of Finding 1, we believe that we fully understand the single need of the individuals eligible for our support. As the draft report points out in Finding 25, we must be mindful of devoting resources to addressing other needs of these individuals. To the extent that we do undertake an effort to address other needs, then the strategic-planning process would add value, as we assess what needs to address and how to address them. We appreciate that the board and the staff can better coordinate on matters of data collection and distillation, which in turn will make the board more effective and the Consortium more efficient.

Finding 2

The Report concludes that the Consortium does not set explicit goals and objectives.

The Consortium has the overarching goal of offering representation to every *pro se* appellant at the CAVC, and then pairing those who accept this offer with a *pro bono* lawyer. We have subsidiary goals of staying on budget and recruiting, training, and screening sufficient volunteer lawyers. We unfailingly achieve these goals.

We agree, however, that there is a time and place for refined goal-setting. For example, the Consortium could have goals for the time to screen a case or the time to make various database entries. The board envisions that the first Executive Director will implement this sort of goal-oriented management tool.

We also agree that a strategic-planning session could be useful, as a means of immersing the executive director, new and old board members, and key staff members into the Consortium's mission and means of accomplishing it and then allow this new leadership to set a new course, as required.

Finding 3

The Report concludes that the Consortium does not regularly analyze and evaluate the effectiveness of its work.

The Consortium reply here is similar to the reply to Finding 2. At the board level, we monitor macro indicators of performance, such as win rate, numbers of volunteers recruited and trained, adequacy of resources, and percentage of appellants who remain *pro se* at the end of their cases. The Consortium staff regularly analyze and evaluate information at a more granular level. For example, volunteer lawyers complete evaluations at the end of their cases, and Consortium staff reviews these evaluations. The Executive Director will certainly centralize and refine this internal review and analysis, and this effort may alter the mix of information that the board assesses. In that context, we see value in Recommendation I-3-1.

Finding 5

The Report concludes that the Consortium material are not as tailored as they should be to the needs of its potential appellants.

The Consortium is always open to improving its communications with *pro se*-filing appellants, and we have refined these documents from time to time. There is a balance between simplifying a legal document, complying with various underlying regulations, such as the Privacy Act, and conveying sufficiently precise legal information. If the LSC process located examples of the twenty or more solicitations from private attorneys (mentioned in Paragraph 3) that are better suited to this purpose, we would appreciate the opportunity to learn from them. In the final analysis, the more simple the communication, the better it is.

Recommendation II-5-2

The draft report suggests including the CAVC's Declaration of Hardship Form with the initial Consortium mailing.

In the great majority of cases, the appellant submits this form to the CAVC along with the appeal. If an appellant requests Consortium support, the Consortium staff will note if this form is not in the file and help the appellant to submit it.

Finding 6

The Report concludes that the Consortium notices to appellants whose cases lack merit may be inefficient and not helpful to appellants.

We will study this issue. Consortium staff have concluded previously that a detailed explanation in written form is actually a time-saver, because it reduces the amount of time necessary to explain the denial to the disappointed appellant. Nevertheless, other organizations use more of a form rejection letter, which saves time and resources. Perhaps there are elements from these form letters that would work for Consortium service denials.

We appreciate the clarification of Footnote 10 to the effect that LSC does not require such detailed letters. Note that Policy Paper 5 provides, in pertinent part: "Appellants whose cases have been screened but not referred for pro bono representation must be so informed by letter and provided the reason or reasons why their case was not referred, as required by the Grant Assurances."

.Footnote #9 needs to be corrected to indicate that Policy Paper 5 is the governing policy. To give context to the quotation included in Footnote 9, it would be useful to note that this Policy Paper contains the following paragraph: "A letter declining to refer a case should offer whatever helpful suggestions are available, as to other courses of action the applicant might usefully pursue – including, in appropriate cases, the suggestion that a second opinion be sought."

Finding 7

The Report concludes that there is suboptimal implementation of the board determination that the CEPC should accept all cases with at least one non-frivolous issue.

Consortium staff maintains that it is faithfully implementing this board guidance. The placement rate of 40% is lower than the conventional wisdom would seem to predict, as the draft report states. A closer analysis, however, indicates that the Consortium cases are most likely from a less promising pool of appellants. Private attorneys take 1/3 of the appeals from inception, and these attorneys almost certainly judge that they have at least one winning issue. VSOs also have already undertaken or coordinated appellant representation of other appellants with greater likelihood of success.

Consortium staff reports a single instance in which the CAVC asked the Consortium to take a case that it had rejected. One is one too many, but this rareness illustrates that the CAVC can, but essentially does not see a need to, challenge the Consortium's screening standards.

Notwithstanding this explanation from Consortium staff, the Board will continue to pursue this issue. Certainly, there is no single definition of "non-frivolous issue." Therefore, it is important that the board and the CEPC staff work to ensure that they set forth and implement the same definition.

In Paragraph 3, page 10, the draft report sets forth several "interrelated issues" touching on the implementation of this standard of review. We agree that each of these issues could arise to some extent, but the Consortium will cross these bridges when and if it comes to them as it reaches out to assist to the maximum ethical extent all *pro se*-filing veterans.

Finding 8

The Report concludes that CEPC staff has not implemented the board's decision to place some cases based on screening of the BVA decision.

To date, the effort has produced some successes, but not on the scale month in and month out that the board anticipated. This BVA-decision-screening approach reflects the Consortium's efforts to implement a best-practice from others representing appellants before the CAVC. Perhaps the discussion above regarding Finding 7 applies here, meaning that the appeal issues are less apparent on the face of the BVA decision in the cases available for such Consortium screening. Perhaps this new effort is over-taxing current resources, and the Consortium will need to find new resources to implement it. The board will continue to refine implementation of this initiative, unless and until it proves an inefficient use of resources.

Finding 10

The Report concludes that the Consortium needs to do more to reach out to veterans with limited English proficiency.

The Consortium rarely encounters language issues; all of its clients who are veterans speak English sufficiently well to participate in their appeals, but there are occasionally spouses with language issues. When we have found a need for interpreter or translation services, we have obtained them, and from time to time we have used bilingual volunteer lawyers in such cases.

Footnote 14 states that some Consortium volunteer attorneys have language issues, but, other than lawyers from Puerto Rico, that seems unlikely, since all are practicing members of a state bar.

Though these language issues are rare, they do arise. The Consortium has addressed them in an *ad hoc* manner, but will consider implementing a more formalized approach.

Finding 13

The draft report concludes that the Consortium screening process is inefficient.

While the Consortium does not feel that the current system fails to meet the needs of *pro se* appellants involved with the Consortium, the Consortium will continue to look for ways to streamline this process. For example, putting an Executive Director in place should help optimize this process. The BVA-decision-screening initiative is another example. As yet another example, the board has directed the CEPC to consider other screening options, such as support from part-time screeners or telecommuting screeners, when the workload exceeds the capacity of the full-time screeners.

On one specific point, the CEPC staff does note the age of the appellant and makes the effort to help WWII and Korean War veterans as quickly as possible.

Finding 14

The draft report critiques in part the quality of the screening memoranda and the reliance on lay screeners.

The draft report raises a legitimate question about the screening memoranda. There are many components to that debate, such as: (1) the necessary level of detail, (2) the uses of and reliance on the memoranda by the volunteer attorneys, (3) the viability of lay screeners, and (4) the need for better quality control.

The Consortium is aware of these issues and is working on them. On the idea of lay versus lawyer screeners, as long as the CAVC allows for lay representation of veterans, the Consortium will look for the best screeners available, lay or lawyer.

Finding 15

The draft report critiques in part the quality of help that the screening memoranda provide the volunteer attorneys.

The surveys cited raise interesting points, and the Consortium will analyze and address these concerns.

Finding 16

The draft report critiques in part the quality of training and supervision of CEPC legal staff.

As stated above, the board envisions retaining an Executive Director as the next step in providing more hands-on supervision of the Consortium's day-to-day performance, which will include training and evaluation.

Finding 17

The draft report critiques in part the assessment of the effectiveness and efficiency of the CEPC legal work.

As stated above, once a volunteer lawyer steps into a case, the Consortium does little legal work for appellants; what the Consortium does for those veterans who request its assistance is, however, effective. There is no room in its business for ineffectiveness. On the other hand, the Consortium is always open to ways to improve efficiency. [Note that the Consortium believes that each of its volunteers, who do the legal work for the appellants, performs effectively, and only rarely does the Consortium need to step in to replace a volunteer attorney who is not performing for his or her appellant. The Consortium will consider how it might affirmatively track the performance of its volunteer attorneys.]

It appears that there is a misunderstanding of the data collected by CPEC, since much of the information discussed in the draft report is captured in one form or another by CEPC. Having said that, the board understands that collection of data is one step in a process of deciding what data to collect and for what purpose, deciding how to analyze it, and interpreting the results. The board is interested in exploring ways to reduce the resources necessary for such data collection, as well as assessing what information might benefit the board. Again, the board expects that the Executive Director will help the board to optimize board's support of the Consortium.

The draft report mentions reducing "barriers to accessing [Consortium] services." The Consortium affirmatively and individually reaches out to every prospective consumer of its services and offers free legal services, a process that we believe is a strong approach to addressing barrier issues. Perhaps the Consortium's materials are not as impressive or as simply worded as others that a *pro se* appellant receives from lawyers in the private bar. Perhaps the lack of multiple languages on the Consortium's website present some difficulty to a few veterans each year. We will work with LSC to better understand barriers between the Consortium and appellants, and then the Consortium will reduce any barriers.

The Consortium believes that it is fully aware of "emerging legal trends and issues raised in appeals." Indeed, Consortium cases are a part of these emerging trends.

The Consortium aspires to be absolutely blind to issues of race, gender, or language. We are interested in discussing with LSC the pros and cons of why, when, and how and if to ask for this information. If it is required by federal law or regulation, or if it will help the Consortium better serve *pro se* appellants, the Consortium will collect such information.

The draft report raises interesting ideas based on potential uses of the Decision Memos and the post-case surveys of the volunteer lawyers.

Finding 18

The draft report suggests that the one-attorney, one-case policy may compromise the quality of representation of appellants.

We agree with the idea that this policy “may” have this impact, but we believe that it does not. In our experience, (outside of basic procedural knowledge which can always be provided by a mentor), a lawyer representing a veteran in that lawyer’s second veterans’ law case will not be more effective than in that lawyer’s initial case. Notwithstanding the foregoing, Policy Paper 14 provides flexibility to assign cases to more experienced counsel, as appropriate, and CEPC does so.

Also, mentors are assigned to guide the volunteer attorneys through this process and to provide advice on substantive issues.

Assigning cases to repeat attorneys creates the unfortunate appearance that the Consortium is choosing to provide a significant financial benefit to a small group of attorneys selected by the Consortium from the large universe of attorneys who we know are willing to represent pro se appellants for free. The cases placed by the Consortium can validly be viewed as a financial asset to potential volunteer attorneys, even though these attorneys would not be charging the client a fee at the CAVC level. If the client becomes a prevailing party as a result of the representation, the volunteer attorney stands to receive thousands of dollars from the VA in court-awarded attorney fees. Also, if the client becomes a prevailing party by virtue of a court-ordered remand (which is the path by which the overwhelming majority of the clients become a prevailing party), nothing prevents the volunteer attorney from entering into an agreement with the client to represent the client on remand for a fee (for example, a contingency fee of 20% of the past due benefits). It is unjust and unwise for a federally funded program to allocate what are in effect financial assets to a select group of attorneys. Indeed, some repeat attorneys are more likely than non-repeat attorneys to be established veterans law practitioners who would seek to charge the client a fee on remand.

Notwithstanding the foregoing, perhaps the Consortium could consider a policy that gives cases with less than less likely chance of winning a remand or reversal to a repeat attorney. With such a policy, the Program could not be criticized for favoring certain attorneys, because in those cases there would be little chance of earning EAJA fees or being able to charge the client a fee on remand.

Finding 21

The draft report suggests exploring new resources materials for the volunteer lawyers.

We agree that the Consortium should continue to explore the value of developing new resource materials that supplement those it now provides to PBRs. We wish to note that the Program does routinely provide sample briefs to mentees. For example, PBC mentors routinely provide sample briefs to mentees and the Veterans Benefits Manual and CD-ROM contain a sample brief. Also, since October 2008 mentees have been informed that all briefs filed in all CAVC cases are available online via the Court’s Case Management/Electronic Case Filing System. The PBR day-long training includes a 50-minute session titled

“Common VA Errors Raised, And Settlement Issues Faced By Counsel” and beginning April 2009 the training materials now include a stand-alone booklet entitled “CAVC Review Process and Practice Tips” that summarize the Court’s Practice, and Procedure and E-filing Rules and provide practice tips. In addition, The Veterans Advocate (TVA) a quarterly law and advocacy journal provides analyses of CAVC cases and is provided to all Program mentees.

Finding 24

CPEC lawyers do not mentor. The current mentor roster includes:

NVLSP:

Ron Abrams (not currently accepting mentor cases, but still has three active cases)

Meg Bartley

Lou George

Christine Cote

Rick Spataro

Matt Sadler

Amy Fletcher

Katy Clemens (on maternity leave now but was active until August 2009 and should be back on board in January or February 2010)

Former DAV, now contract mentor from Chisholm, Chisholm & Kilpatrick:

Landon Overby

PVA:

Bill Mailander (one active case)

Mike Horan

Linda Blauhut

Jennifer Zajac

Performance Area Four

The first paragraph says that the Consortium’s “organization structure significantly compromise[s] the program’s governance . . . and . . . undermines its overall effectiveness.”

While the board concurs with and has made significant strides in implementing the three “most important recommendations,” we do not perceive the status quo as significantly compromised or the Consortium as in any way ineffective, notwithstanding the findings conclusions to the contrary. The Consortium succeeds for its appellants every day, but it will not rest on its laurels. Instead, it looks forward to making progress on elements set forth in this Performance Area.