

## **NATIONAL VETERANS LEGAL SERVICES PROGRAM**

Update to Barbara McDowell Foundation

Work Through 1st Quarter 2020

### **I. "Transfer Delay" Veterans' Class Action**

Before October 1, 2019, the U.S. Court of Appeals for Veterans Claims (CAVC) had certified only two class actions in its history: *Godsey v. Wilkie* (certified June 13, 2019) and *Wolfe v. Wilkie* (certified September 9, 2019). NVLSP is class counsel in both actions, and extensive pre-filing preparation was essential to both victories. Even though the McDowell-funded "transfer delay" class action relates closely to *Godsey*, we again viewed careful pre-filing preparation as essential to success.

NVLSP's work on the "transfer delay" class action during the fourth quarter of 2019 focused on two areas. The first was legal research. The second, equally important because the Department of Veterans Affairs aggressively has attacked the choice of class representative in each CAVC class action so far, was determining how most efficiently to use the resources available to us to identify the best "transfer delay" class representatives. At the end of the quarter, we began to draft the initial class pleadings.

NVLSP's work on the "transfer delay" class action during the first quarter of 2020 focused on honing our draft pleadings and identifying suitable class representatives. We contacted Board of Veterans' Appeals (BVA) staff as part of our final, pre-litigation investigation, asking pointed questions about the delays and how the BVA had been representing them in Congressionally mandated public filing.

Within a week of us contacting the BVA, they did an about face and quickly embarked on a systemic effort to end such "transfer delay." Over the next six weeks, VA identified appeals stuck in this clog and forwarded them to the BVA for decision. Our follow-up investigation showed that VA had so greatly improved its speed in transferring appeals to the BVA that NVLSP would be unlikely to achieve better results through litigation. NVLSP again thanks the McDowell Foundation for its generous support of this project, which has brought a long-needed reduction in the VA appeals delay experienced by our nation's veterans.

### **II. "Category II" Class Action**

In late March 2020, the McDowell Foundation generously agreed to accept a successor project from NVLSP to replace, for purposes of NVLSP fulfilling its Grant obligations, the above project that essentially had become moot.

The project involves a class action lawsuit to secure military disability retirement benefits for more than 16,000 disabled veterans from the Navy and Marine Corps. Dechert LLP has agreed to serve as co-counsel with NVLSP, providing their services on a pro bono basis. NVLSP is providing the subject matter expertise on the laws and regulations governing military disability retirement. NVLSP will continue to secure appropriate class representatives, communicating with and reviewing the records of putative class members.