

## Veterans and Service Members Legal Clinic UF Law Training Manual

### Helpful resources.

#### **How to write a white paper.**

[https://en.wikipedia.org/wiki/White\\_paper](https://en.wikipedia.org/wiki/White_paper)

<https://www.wikihow.com/Write-White-Papers#:~:text=A%20white%20paper%20is%20a%20one-to%20five-page%20document,It%E2%80%99s%20commonly%20used%20in%20government%20and%20corporate%20settings.>

Students have asked how to write a white paper. I found these resources to help you get started. Remember, you are writing for a governmental office. Writing white papers will prepare you for corporate or governmental in-house positions. You do not have to adhere to this guidance. You can write an objective memo with a purely legal question (usually the case, but not always) in the form you learned in law school. I teach Legal Writing, so reach out if you would like a reminder as to the format for objective memoranda. I am happy to review and provide feedback on your chosen format. It is best to start with research to get your arms around the question and the answer. Then, you can choose formatting. For these judge advocate projects, you are not persuading an audience as to a thesis. Rather, the papers are informative guides. Of course, research questions vary. Moreover, when you submit your white paper to the Navy, after my review and feedback, you should also provide electronic copies of helpful secondary sources as well as key primary sources. Plus, your white paper should have appropriate legal citation; you are writing to lawyers.

As to do-it-yourself guides, many legal aid offices issue such guides, so, with research, you can find examples online. For example, Jacksonville Area Legal Aid provides do-it-yourself guides to many common client problems.

<https://www.jaxlegalaid.org/covid/>

Each of you will be assigned cases with live clients. Of course, these live client cases, whose cases have deadlines, take priority. However, these research projects for the U.S. Navy are a great way to do added legal work when you have pauses in live client work. Plus, they count for pro bono hours because you are doing these projects for the Navy.

**Veterans Benefits Manual.** Always start your research by looking in the index of the Manual, and then read sections relevant to your case, or the procedural posture in which you are working in your case. For example, if your claim involves hearing loss, read the Manual section on hearing loss. If your claim involves presumptive service connection, read that section from the Manual. If your claim involves TDIU, read that section. Moreover, use the Manual for skills/procedural stuff. For example, if you are about to file a reply brief, read the Manual's section on reply briefs as well as the rule of procedure that can be found on the website of the US Court of Appeals for Veterans Claims. The Manual will provide citations to helpful primary sources, and then find those sources on Westlaw or Lexis. Those sources will connect you to

others. Begin identifying relevant primary sources by looking to the primary sources cited in the screening memo and Board decision. You can buy a physical copy of the Manual, and there is also a publication of key primary sources (rules of procedure for the Veterans Court, regulations concerning veterans' benefits, relevant veterans' statutes) in a separate book published by the NVLSP. You can find a free version of the Manual on Lexis at this website. Please note there is also a chapter about discharge upgrades in the Manual.

<https://signin.lexisnexis.com/laccess/app/signin?back=https%3A%2F%2Fplus.lexis.com%3A443%2Ftoc%2F%3Fpdmfid%3D1530671%26crld%3D1e6de61d-2d6f-4ce6-ad34-55d9550bf403%26pdtocfullpath%3D%252Fshared%252Ftableofcontents%252Furn%253AcontentItem%253A5B7R-WCM1-F0HM-11PM-00000-00%26ecomp%3Dcywk%26earg%3Dsr0%26prid%3D59172d2d-2a8c-4b08-a7fa-6ac66ab710b3&aci=lp>

**The Veterans Consortium.** You will receive online training on appeals to the Veterans Court, discharge upgrades, and remands to the Board of Veterans' Appeals (Board) through the TVC. You will find on my course page a TVC book for: (1) remands to the Board and (2) discharge upgrades. TVC has helpful materials, including sample: (1) briefs, (2) rule 33 conference memoranda, (3) motions, (4) representation agreements, and (5) close out letters. Also, I wrote an article entitled *Top 10 Discharge Upgrade Tips* with Colleen Miller and Danica Gonzalves, and I have posted that article on my course page; it concerns VA character of discharge and discharge upgrades. By looking in Clio client files, for various clients I will identify in class, you can find sample: (1) discharge upgrade briefs for mental health cases and don't ask don't tell cases, (2) query letters to medical experts, (3) lay statements from veterans, family members, and service buddies, and (4) character of discharge briefs for mental health cases.

<https://www.vetsprobono.org/library/>

**National Law School Veterans Clinics Consortium.** This is the organization that put on the Boot Camp and does so every semester. You can review multiple daylong Boot Camps that provide great practice-oriented training. There are several available on the website. I am now on the board of this organization, and we are heavily involved in its Advocacy Committee and Legislative Advocacy Committee. Through the Advocacy Committee, we draft amicus brief before the Federal Circuit and Supreme Court. Through the Legislative Advocacy Committee, we comment on proposed VA regulations and congressional legislation. Students will be assigned to meet with these committees, and we will accept projects from these committees during the semester. Visit <https://nlsvcc.org/member-login/> to log in to find helpful materials. You will have to enter the username and the password. That information is as follows username: Corporate. Password: Corp4NLS2019. This may change, so if you struggle accessing the materials, contact me, and I will help you resolve the issue. You can find all the PowerPoint materials as well as the recordings of the sessions from the Boot Camps as well as other helpful materials on the nlsvcc website.

**Montana Law Veterans Law CLE.** In the last few years, the University of Montana School of Law put on a CLE about discharge upgrades and character of discharge matters. On the link

below you will find helpful videos about discharge upgrades and character of discharge matters as well as PowerPoint presentations corresponding to the videos. Also, you will find DOD policies for discharge upgrades and citations to primary sources governing discharge upgrades and character of discharge matters. <https://www.umd.edu/law/newsevents/events/vetclaims.php>. I have posted these policies on my course page, and I will email them to you.

**Swords to Plowshares.** This nonprofit organization supports veterans. On the website, you can find helpful information. For example, you can find guidance on preparing a stressor statement for a PTSD claim, preparing an application for a character of discharge matter, helping a doctor prepare a nexus opinion in support of a claim, and all sorts of other materials.

<https://www.swords-to-plowshares.org/>

**CCK Veterans Law Firm.** <https://cck-law.com/veterans-law-resource-center/> This law firm is one of the preeminent firms serving veterans, and it provides helpful resources. You can find advice on assisting medical experts provide expert statements, preparing a PTSD stressor statement, and supporting a TDIU claim, for example.

**The website for the US Court of Appeals for Veterans Claims.** You can find helpful material on this website. First, you can find the rules of procedure for the Veterans Court. Those rules tell you the specifics about preparing briefs, filing motions, extending deadlines, etc. Also, by entering the veteran appeal number or the last name of the veteran, you can do a docket search. By doing docket searches in our cases, you can find sample initial briefs, reply briefs, opposition briefs, and motions including joint motions for remand and extension motions. In class, I can give you client names so that you can do a docket search and find samples. However, the rule 33 conference memo is not posted on the Veterans Court website because it is confidential, so you will have to find sample conference memoranda by looking in Clio client files. I can give you names of similarly situated clients in class. Also, you can watch live and recorded oral arguments. <http://www.uscourts.cavc.gov/>

**VA website.** When you are searching for scientific materials relevant to health conditions your clients experience or concerning exposures your clients endured (such as noxious air during Desert Storm), consider visiting VA's webpage and searching for VA's scientific studies.

<https://www.research.va.gov/services/csrd/> Also, when you are filling out forms, such as initial claim forms for disability compensation, VA powers of attorney, or supplemental claims forms, visit the VA website. <https://www.va.gov/disability/how-to-file-claim/> Plus, when you are working with medical experts, you can visit the VA webpage to find DBQs.

[https://www.benefits.va.gov/compensation/dbq\\_disabilityexams.asp](https://www.benefits.va.gov/compensation/dbq_disabilityexams.asp) Moreover, the VA telephonic helpline has proven helpful to student clinicians. Representatives will not talk with you about an individual veteran's case but will give you general guidance. Representatives are trained. That number is 1-800-827-1000

<https://benefits.va.gov/benefits/offices.asp#:~:text=Veterans%20can%20continue%20to%20get%20information%20about%20benefits,%26%20Information%20System%20%28IRIS%29%20or%20telephone%20at%201-800-827-1000.>

## **General Items:**

Types of cases:

- Discharge upgrade (DoD)
- Character of discharge determination (VA)
- Appeals to CAVC
- Remands to Board/initial claims to RO
- JAG research
- Amicus briefs for the US Court of Appeals for the Federal Circuit and US Supreme Court
- Reports to DOD advisory committees
- Comments to proposed VA regulations and proposed legislation
- Petitions for VA rulemaking
- Know your rights presentations to ROTC students and veterans struggling with homelessness. If you are interested in these, contact me, and I can get you started with previous PowerPoint presentations, direct your research, and help you choose topics.

Required hours: 270 (count everything!) Fill out timecards every week and send them to me by 5:00 PM on Sunday evening of the week.

- Appeals to USCAVC- can recover attorney fees
- Very clearly log hours on CLIO (before clio use word doc); keep a backup record on word
  - Name of person
  - Specific about activity (review record? Incl. pg. #)
  - Bill in three hours or less segments
  - If you are reviewing the RBA, specify the page numbers reviewed
  - If you are researching or writing an argument, specify the argument
- Count everything – time spent researching background info, time preparing for client interview, time reviewing the RBA, everything in connection with case.

## **How to Approach Case – appeals to the Veterans Court.**

- **Veterans Benefits Manual Ch. 14.5**
- First: review RBA for completeness & legibility
  - This is the search for all of the important info: read Board decision and other VA decisional documents and look for all of the VA decisions and evidence cited therein.
  - Make sure it's all there!
- Interview the client. The client can help you understand the record.
- Begin reading/researching/writing conference memo
  - Strict formatting requirements – 10 pages, 13 point font; argumentative point headings; first explain the law; then apply it; record citations after every sentence in which you discuss the facts; legal citations after every sentence in which you make a point of law; for the application section, strive to have both a record

citation and a legal citation after every sentence; consult the Veterans Court rules of procedure.

- Rule 33 Staffing Conference
- If remand not granted, write full appellate brief. Look to sample conference memoranda relevant to the issues implicated in your case and look to sample initial briefs relevant to the issues presented in your case.

## **MEMORANDUM FOR RECORD**

TO: Student Clinicians  
FROM: Professor Clausen  
RE: Guidance for initial review of the RBA

Review the Veterans Benefits Manual chapter entitled “Reviewing VA Claims File.”

Also, in the Boot Camp from the National Law School Veterans Clinic Consortium from the fall of 2021, there is an excellent video on how to review the RBA.

Please follow the following guidance.

- (1) Calendar the deadline for your dispute to the RBA. Share that deadline with your team and the professor.
- (2) Submit your document log to the professor at least one week before the deadline. Calendar that professor submission deadline. Share that deadline with your team and the professor.
- (3) Review the RBA to determine whether there are any missing pages (i.e. page numbers – any missing?).
- (4) Review the Board’s decision and list all evidence it cites as well as all adjudicative actions it mentions. Make a list of these items. You will search for these items with the goal of ensuring they are in the RBA and with noting the page number on which they begin and conclude.
- (5) According to Rule 10(A), the RBA must include “a list of any record matter that cannot be duplicated.” Notably, this might include x-rays or other such material that could not be included in the RBA. (This may be implicated but probably will not.)
- (6) If you need more time to review the RBA, notify the professor who will contact VA General Counsel and request consent to a Motion for Extension of Time to review the RBA. Authority for this extension comes from Rule 26(B).
- (7) In addition to listing all evidence and adjudicative actions referred to in the Board’s decision, list all evidence and adjudicative actions referred to in the Statement of the Case and Supplemental Statement of the Case which you will find in the RBA. In these documents, there is an itemized list – this makes it easy.
- (8) The RBA should be divided, equally in the order in which the names of the team are listed on the case assignments between the members of the team. One method designates one of the student clinicians to list all evidence and adjudicative actions referred to in the Board decision, Statement of the Case, and Supplemental Statement of the Case. The team should ensure all these items are in the RBA. The team should record in the document log the page number for the beginning and end of each piece of evidence and adjudicative decision referenced in the Board decision, the Statement of the Case, and the Supplemental Statement of the Case. Please note that in some instances there may be two Statements of the Case, and there may or may not be a Supplemental Statement of the Case. This all depends. During the review of the entire RBA, the

team will undoubtedly uncover other documents, and the team should date, name, and note the beginning and end page of these documents as well in the document log. Include key quotes in your document log.

(9) With your portion of the RBA, without reading every word, search for each of the items listed in this list of evidence and adjudicative actions mentioned in the Board decision, Statement of the Case, and Supplemental Statement of the Case. When you find the document, confirm the date, confirm that every page is in the document, and confirm that it is for this veteran.

(10) After you have done this for your portion, you can make a comprehensive document log for your portion of the RBA, listing date, page number of beginning of document and end of document, and title for each document found. If the document is a doctor's note, indicate the doctor's name.

(11) Another method allows each student to list each document, in chronological order, in that student's portion of the RBA. Then, one or more members of the team should create a list of all evidence and adjudicative actions from the Board decision, the Statement of the Case, the Supplemental Statement of the Case and ensure that each of these documents is in the RBA and record the page numbers.

Please let me know if you have questions.