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Professor David Coombs's Post

Veterans Court's Decision Will Affect RWU Law's Veterans Disability Field Clinic

Posted by David Coombs on 02/24/2016 at 11:03 AM

The **U.S. Court of Appeals for Veterans Claims (CAVC)** will sit at the Roger Williams University School of Law on **Wednesday March 2**. The Court will hear oral arguments in *Robert Chisholm v. Robert McDonald*, CAVC No. 15-1594.



If the name of the petitioner sounds familiar, it's for good reason. Mr. Chisholm is one of the founding partners in Chisholm, Chisholm, and Kilpatrick (CCK), a Providence, Rhode Island law firm with a national practice and reputation for representing disabled veterans in the CAVC and the Department of Veterans Affairs.

Last year, CCK and RWU Law created the Veterans Disability Appeals Field Clinic. The appellate clinic offers valuable experiential learning opportunities to law students while also providing necessary legal services to the local veterans' community.

At issue in the case of *Chisholm v. McDonald* is just how effectively CCK and law students at RWU can assist veterans. Mr. Chisholm petitioned the CAVC for extraordinary relief in the nature of a Writ of Mandamus to compel the Veterans Administration to grant access for paralegals under Mr. Chisholm's supervision to the Veterans Benefits Administration's automated claims records system. The records within this automated system contain eligibility information that CCK relies upon to represent its clients. Currently, if a paralegal from CCK wants to obtain information for a client, he or she would need to submit a written request for it from the Veterans Administration (VA). With access to this online system, a paralegal could instantly obtain this information directly through the records system. Eliminating the

need to request information from the VA would not only enable CCK to provide timely representation to clients, but also help reduce the administrative burden on the VA.

In its reply, the VA characterized its position not as a refusal to grant the requested access, but as an inability to do so due to the Privacy Act. The VA also stated the requested access could not be granted since it did not have the technological ability to limit a paralegal's access solely to the records of a claimant who has provided written authorization for disclosure. Through its filing, CCK disputed the legitimacy of the stated constraints by the VA since all of CCK's clients sign release forms authorizing disclosure of information by the VA.

Mr. Chisholm's petition for extraordinary relief presents the Court with an issue of first impression: whether a refusal by the VA to permit CCK paralegals access to pertinent Veterans Benefits Administration automated claims records deprives a claimant of the right of full representation under 38 C.F.R. § 3.103(a). This question is a matter of exceptional importance to veterans and their dependents. Typically, without the assistance of an attorney, a veteran is helpless in navigating the complex VA filing and notice requirements.

The answer provided by the CAVC will undoubtedly have impact on veterans' claims for years to come.