

Brian David Schenk

LICENSING AND ADMISSIONS

Licensed to practice law in MN. Admitted in the U.S. District Courts for the Districts of D.C., Maryland & Minnesota, U.S. Court of Federal Claims, U.S. Court of Appeals for the D.C. Circuit and U.S. Court of Appeals for the Federal Circuit.

EDUCATION

William Mitchell College of Law, St. Paul, MN

Juris Doctor May 2010

Honors: *Editor*, William Mitchell Law Review, Vol. 36
Coordinating Editor, National Security Forum Journal, Vol. 5
Staff Member, William Mitchell Law Review, Vol. 35

Macalester College, St. Paul, MN

Bachelor of Arts in Political Science, May 2003

LEGAL EXPERIENCE

Midwest Military & Veterans Law, P.L.L.C., Minneapolis, MN

Attorney & Founder, September 2016 to present

Represent current and former service members in a broad range of legal matters involving military employment law and litigation. Provide representation on numerous legal issues for adjudication by federal administrative agencies such as: Boards for Correction of Military Records, Discharge Review Boards, Physical Evaluation Boards, Defense Office of Hearings and Appeals, and Personnel Records Review Boards. Provide representation for appealing adverse agency action in the U.S. Court of Federal Claims, federal district court and federal circuit appeals courts. Conduct Continuing Legal Education (CLE) courses on discharge upgrades, boards for correction of military records, and judicial review of military agency decisions.

Law Offices of David P. Sheldon, Washington, DC

Attorney, October 2010 to September 2016

Law Clerk, October 2007 to October 2010

Paralegal, July 2005 to July 2007

Researched and drafted federal civil litigation pleadings in over 30 cases seeking judicial review of federal agency decisions under the Administrative Procedures Act in federal district court and the U.S. Court of Federal Claims. Drafted pleadings, discovery and trial materials in cases against the U.S. under the Privacy Act and Federal Tort Claims Act (FTCA). Possess second chair, federal trial experience. Represented clients in petitions for writ of certiorari filed in the U.S. Supreme Court (*e.g. Schwalier v. Carter*, No. 14-1189 (U.S. May 25, 2015)), U.S. Courts of Appeals for the District of Columbia and Federal Circuits. Draft appellate materials in the military criminal courts of appeal and the Court of Appeals for the Armed Forces.

TEACHING EXPERIENCE

Mitchell/Hamline School of Law, St. Paul, MN

Adjunct Professor for HYBRID Program, January 2018 to Present

Guide and evaluate student work for Property Law and Constitutional Law-Liberties courses.

PUBLICATIONS AND PRESENTATIONS

Discharge Upgrade Legal Practice Manual, American Bar Association (2022)

Co-authored *Chapter 13: Medical Separations and Retirements*

Judicial Review and Administrative Military Legal Standards, John Marshal Law Journal Symposium (March 2019)

The Nuts and Bolts of Discharge Upgrades, MSBA Military and Veterans Affairs Section CLE (May 2019)

REPRESENTATIVE FEDERAL COURT CASES

Marta v. Whitley, 20-cv-1020 (D.D.C. Mar. 31, 2021)

As lead counsel, prevailed and secured remand in ABCMR-review case involving transfer of GI Bill benefits. Plaintiff was awarded retroactive benefits on remand.

Annicelli v. Kendall, No. 20-02647 (D.D.C. Mar. 30, 2022)

Litigated a set-aside and remand of AFBCMR decision involving challenge to commander directed investigation (CDI)

Code v. McCarthy, 959 F.3d 406 (D.C. Cir. 2020)

Co-authored *amicus curiae* brief in successful appeal of lower court decision involving review of an ABCMR decision

Conti v. United States, No. 20-1732 (Ct. Cl. Dec. 2, 2020)

Pending AFBCMR-review case involving Air National Guard assignment and promotion procedures

Dudoit v. Whitley, 20-cv-00766 (D.D.C. Mar. 18, 2020)

Pending ABCMR-review case involving reserve officer's separation after adverse Board of Inquiry

REPRESENTATIVE ADMINISTRATIVE CASES

AFBCMR Dkt. No. BC-2019-02098 (July 2020)

Granting 2.5 years of retroactive active-duty medical continuation pay

AFBCMR Dkt. BC-2016-05015 (Feb. 2022)

Granting retroactive disability retirement instead of separation with severance pay

Army Suitability Evaluation Board Dkt. No. AR20180008809 (Sept. 2018)

Adverse memorandum of reprimand removed, officer subsequently promoted

Army Combat-Related Special Compensation determination (Oct. 2018)

Veteran awarded 80% CRSC compensation for combat injuries

BCNR Dkt. Nos. 4817-20 (June 2021); 7325-18 (Aug. 2019); NDRB Dkt. No. MD19-471 (Oct. 2019)

Upgrading adverse discharges based on post-service conduct and/or mental health claims

BCNR Dkt. No. 2951-19 (Mar. 2020)

Retroactively retiring Marine reservist previously deemed ineligible

BCNR Dkt. No. 1992-18 (Aug. 2019)

Retroactively referring Naval reservist to PEB, ultimately resulting in medical retirement

BCNR Dkt. No. 5217-17 (Aug. 2017)

Correcting record to establish Survivor Benefit Plan annuity for previously ineligible dependent

RESEARCH INTERESTS

Military records-correction board accountability and reform

Judicial review of military-agency action

Military medical separations and appeal process