

## **BIOGRAPHY**

**Matthew A. Kelly**

**Staff Attorney**

**Department of Veterans Affairs (VA) Office of Regional Counsel**

1108 3<sup>rd</sup> Avenue, Suite 102

Huntington, WV 25701

Email: [Matthew.Kelly@va.gov](mailto:Matthew.Kelly@va.gov)

Matthew Kelly is a West Virginia native who graduated from the University of Notre Dame (cum laude), majoring in Government, before attending law school at the West Virginia University College of Law. While at the WVU College of Law, he was a member of the Moot Court Board. He graduated from law school in 2002 and is admitted to practice law in West Virginia state and federal courts and the 4<sup>th</sup> Circuit Court of Appeals.

Mr. Kelly has been a staff attorney with the VA Office of Regional Counsel, Huntington, WV area office, since 2007. His practice focuses on employment/personnel law. The clients he serves include two medical centers, a regional office, and a number of community based outpatient clinics. He has represented the Agency in a number of forums, predominantly as the Agency representative in Equal Employment Opportunity Commission (EEOC) cases, Merit Systems Protection Board cases, and grievance arbitrations. Prior to joining the VA, he practiced law in private practice for five years.

Mr. Kelly has been a presenter at a number of continuing legal education programs, including the EEOC's Examining Conflicts in Employment Law (EXCEL) conference, the Appalachian Institute of Digital Evidence conference, the VA Office of General Counsel Employment Law Regional Training College, and the WV State Bar Veterans & Military Affairs Committee 2012 Statewide Seminar/Webinar.

# STEPHEN F. BUTERA

[para55a@gmail.com](mailto:para55a@gmail.com)

## PROFILE

### LEGAL COUNSEL

**Government Procurement ▪ Environmental Law ▪ Labor & Employment ▪ Regulatory Policy ▪ Litigation & ADR  
Team Leadership ▪ Staff Management & Development ▪ Policies & Procedures ▪ Legislative Interpretation**

Accomplished legal counsel with extensive governmental experience and significant achievements drafting and negotiating government contracts, managing labor and employment issues, participating in regulatory proceedings, analyzing legislative and policy directives, and resolving complex disputes. Experienced in a variety of legal disciplines — from transactions to litigation to compliance and environmental — with a solid understanding of legal, financial, regulatory, and policy dimensions. Skilled in supporting teams through successful legal initiatives, facilitating change, developing and managing staff, implementing innovative solutions, increasing revenues, and reducing costs. Expert in interpreting legislation, regulations, and directives, developing solutions to administrative challenges, and adhering to governmental policies and procedures.

## EXPERIENCE

### DEPARTMENT OF VETERANS AFFAIRS

*Attorney Advisor, Office of the Regional Counsel, Region 7*

Clarksburg, WV

2008 – Present

- Provide legal counsel to the Medical Center Director and staff, and handle the legal affairs of the West Virginia National Cemetery and the Morgantown Vets Center – Responsible for providing timely and accurate legal advice to the management of the VA in the areas of government procurement/contracts, labor & employment, and administrative law (ethics, fiscal, FOIA, information release, etc.).
- Gained first-hand Federal procurement litigation experience before the SBA, GAO and Court of Federal Claims.
- Named National VJO Committee Chair for the Department of Veterans Affairs, Office of General Counsel, responsible for managing and overseeing the actions of 15 attorneys around the country in direct coordination of their efforts to establish VJO programs in their jurisdictions, and selected to serve as the Veterans Justice Outreach Coordinator for WV and OH.
- Established the VJO Court through negotiations with the WV Supreme Court, the first of its kind in the nation.
- Initiated, as Veterans Justice Outreach Liaison, several innovative programs that provide legal assistance to veterans in conjunction with VA national objectives.
- Represented the Agency in dozens of employment law cases in a variety of forums to include EEOC and MSPB, as well as union arbitrations and mediations.
- Created the Veterans Law Clinic with the WVU College of Law, and presently working with the Ohio Attorney General and WV Bar Association to develop a statewide veterans legal pro bono program.
- Serve as collections attorney for Region 7, and several other Regional Counsel offices, establishing an innovative MCCR collections, and leading a staff of 7 paralegals to outstanding recoveries resulting in annual increases of over \$1M dollars in revenue for the Agency.
- **Award:** Recipient of the Team OGC Veteran Service Award for VJO accomplishments, 2012-2013.

### DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION

*Intelligence Analyst, New Jersey Division*

Newark, NJ

2004 – 2008

- Handled the analysis and dissemination of intelligence regarding the operations of drug trafficking organizations, both domestically and internationally, and managed a team comprised of 2 intelligence technicians and 1 data entry specialist.
- Assisted in the establishment of the Division's Task Force on Heavy Truck Interdiction (Operation Jersey Barrier) that directly focused on the trafficking of illegal narcotics and associated monetary proceeds by Class 8 motor vehicles.
- Dismantled several international and domestic drug trafficking organizations and seized hundreds of kilos of illegal narcotics through the efforts of the Division's Task Force on Heavy Truck Interdiction, recovering millions of dollars in U.S. currency and real property.

### MILLENNIUM TRANSPORT, INC.

*Owner & CEO*

Keyport, NJ

1996 – 2004

- Led the overall management and business operations of a \$2 million global transportation company comprised of a fleet of 55 trucks, and hired, trained, and supervised a team of 30 drivers and 5 office personnel and maintenance staff.
- Developed accounts with major corporations including General Electric, General Motors, and Rolls Royce.

## E X P E R I E N C E (Continued)

|                                                                 |                                          |
|-----------------------------------------------------------------|------------------------------------------|
| UNITED STATES ARMY                                              | Various U.S. and International Locations |
| <i>Command Judge Advocate</i>                                   | 2002 – 2003                              |
| <i>Judge Advocate</i>                                           | 1999 – 2002                              |
| <i>Special Assistant United States Attorney</i>                 | 1995 – 1999                              |
| <i>Chief, Environmental Law &amp; Chief, Transportation Law</i> | 1992 – 1995                              |
| <i>Recovery Judge Advocate</i>                                  | 1991 – 1995                              |
| <i>Chief of Administrative Law</i>                              | 1990 – 1991                              |
| <i>Group Judge Advocate</i>                                     | 1990                                     |
| <i>Chief Legal Assistance</i>                                   | 1988 – 1990                              |

### General Advisor, Operations & Procurement:

- ☐ Completed a 14-month deployment in Bosnia, Kosovo, and Western Europe as a Command Judge Advocate to support Operation Enduring Freedom; served as Commander's Attorney for the Brigade consisting of 2,200 soldiers; provided comprehensive legal advice to commanders and soldiers in all aspects of operational, administrative, and criminal law.
- ☐ Assigned to 7th Legal Services Organization (LSO) in Albany, New York, to manage legal activities for the mobilization of various units throughout NY, NJ, and PA.
- ☐ Served as Assistant Operations Officers; analyzed staffing requirements to develop team schedules.
- ☐ Managed all legal operations for military shipments from east of the Mississippi River to the Euro-Asian border; developed significant expertise in maritime, surface & air transportation, and contracting law.
- ☐ Graduate of the United States Army Judge Advocate General's Corp Contract Attorney Course, and Graduate of the Department of Veteran Affairs, General Counsel Masters in Contract; taught a course in Federal procurement law.

### Staff Management & Supervision:

- ☐ Managed and supervised 2 Legal Specialists and 2 Legal Assistance Attorneys as Command Judge Advocate.
- ☐ Supervised a staff of 5 Legal Specialists and 1 Attorney as Chief Legal Assistance.
- ☐ Led a team comprised of 1 attorney, 2 NCOs, and 1 enlisted soldier as Chief of Administrative Law.

### Litigation & Dispute Resolution:

- ☐ Prosecuted Federal Magistrate's Court throughout all military bases in NJ; handled more than 200 trials; achieved a prosecutorial record of 200 convictions with zero acquittals; and earned the Meritorious Service Medal for exceptional performance.
- ☐ Prosecuted first federal hostage goods case, and appeared before the Federal Maritime Commission.
- ☐ Subrogated claims against insurance companies for government-provided services, securing a record of more than \$500K in recoveries in one year.

### Environmental Law:

- ☐ Ensured the Command's compliance with all state and federal environmental laws throughout 13 ports on the East Coast; led Command through the first Command Environmental Assessment, with no significant violations.

### Administrative Law:

- ☐ Served as a member of a counter-narcotics task force to stop the flow of narcotics into the U.S. from Central America and Mexico; provided advice in the areas of criminal and administrative law; designed and conducted training; and managed all legal issues throughout mission.
- ☐ Provided Commanders and subordinates with legal advice on administrative law and Army rules and regulations.

### Military Duty:

- ☐ Inactive Army Reserve, 1995-1999
- ☐ Assistant Team Leader — C Co 2nd Bn 19<sup>th</sup> Special Forces Group (Airborne), WV National Guard, 1983-1987

## E D U C A T I O N

|                                                                                                     |      |
|-----------------------------------------------------------------------------------------------------|------|
| SETON HALL UNIVERSITY SCHOOL OF LAW, Newark, NJ ▪ <i>Juris Doctor</i>                               | 1987 |
| UNIVERSITY OF CHARLESTON, Charleston, WV ▪ <i>Bachelor of Science in Marketing &amp; Management</i> | 1983 |

## B A R A D M I S S I O N S

Commonwealth of Pennsylvania (51055) ▪ U.S Supreme Court ▪ U.S. Army Court of Military Appeals



# **Representing VA Claimants: Accreditation, Fees, and Power of Attorney**

**Matthew Kelly**

**Stephen Butera**

Office of the General Counsel  
Department of Veterans Affairs



# Introduction

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- **38 U.S.C. chapter 59 and portions of 38 C.F.R. parts 1, 14, and 20 govern VA's accreditation program**
- **VA's accreditation program accredits VSO representatives, agents, and attorneys.**



# Introduction

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## VA Office of the General Counsel (OGC):

- **Manages VA's accreditation program. The purpose of the program is to ensure that claimants for benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits. 38 C.F.R. § 14.626.**
- **Has original jurisdiction to determine whether fees charged by accredited agents and attorneys are reasonable. 38 C.F.R. § 14.636.**



# Introduction

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- **OGC's authority to regulate representation is limited to proceedings before VA's agencies of original jurisdiction and the Board of Veterans' Appeals.**
- **VA has no authority to regulate representation of claimants before any court.**



# Representing VA Claimants

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## 1. Accreditation





# Accreditation

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## Statutory authority:

- **No individual may act as an agent or attorney in the preparation, presentation, and prosecution of claims before VA without first being “recognized” (accredited) by the Secretary of Veterans Affairs. 38 U.S.C. § 5901.**



# Accreditation

## Definitions: 38 C.F.R. § 14.627

- Accreditation means the authority granted by VA to attorneys to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.
- Attorney means a member in good standing of a State bar who has met the standards and qualifications in 38 C.F.R. § 14.629(b).
- Claimant means a person who has filed or has expressed to an accredited individual an intention to file a written application for VA benefits.
- Representation means the acts associated with representing a claimant in a proceeding before VA pursuant to a properly executed and filed VA Form 21-22a.



# Accreditation

## Accreditation requirements: 38 C.F.R. § 14.629(b)

- **Attorneys must apply to OGC on VA Form 21a.**
- **Unless VA receives information to the contrary, bar membership in good standing establishes an attorney's character and fitness to represent claimants before VA.**
- **Attorneys must satisfy a continuing legal education requirement (CLE) to maintain their accreditation.**



# Accreditation

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## Accreditation requirements: (CLE)

- **Accredited attorneys must complete 3 hours of qualifying CLE credit within one year of initial accreditation by VA.**
- **To maintain accreditation, attorneys must complete an additional three hours of qualifying CLE not later than 3 years from the date of initial accreditation and every two years thereafter.**



# Accreditation

## Requirements of the CLE:

- **Approved for at least 3 hours of CLE by any State bar association**
- **At a minimum, the initial CLE must cover the following topics: representation before VA, claims procedures, basic eligibility for benefits, appeals, disability compensation, DIC, and pension. Subsequent CLEs may be on any veterans benefits law topic.**
- **Attorney must submit CLE certification in writing to VA's Office of the General Counsel, including the CLE title, date, time, and provider.**

**NOTE: This CLE does not fulfill the CLE requirement for VA accreditation.**



# Accreditation

## Accreditation requirements: (reporting)

- **Attorneys must annually provide to VA information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to appear.**
- **Attorneys must also inform VA of any disbarment or suspension from practice before any court, bar, or Federal or State agency within 30 days of the suspension or disbarment.**
- **VA will not accredit any individual as an attorney if the individual has been suspended by any court, bar, or Federal or State agency to which the attorney was previously admitted and not subsequently reinstated.**



# Who needs to be accredited by VA?

## Any attorney wishing to assist claimants in preparation, presentation and prosecution of claims for VA benefits

- 1) If an attorney's practice only advises clients they might be eligible for benefits and refers them to a recognized service organization or accredited agent/attorney, does the attorney need to be accredited?

No. As a general rule, an attorney's practice of broadly advising individuals on elder law issues, which may include VA benefits but not a specific claim, does not require accreditation.

- 2) If an attorney works with pension benefit clients and advises clients as to eligibility requirements, but refers them to another business to file the application for them, do they need to be accredited?

Yes. We assume that (1) a "pension benefit client" means a veteran not currently receiving VA pension but one who has expressed intent to file for such benefits, and (2) the advice provided includes those acts in making the claim ready for filing, but not the actual filing of the claim. Here, the advice constitutes preparation of a claim and therefore requires accreditation.



# Who cannot be accredited by VA?

- VA will not accredit someone who appears to be seeking accreditation for purposes other than individually assisting VA claimants with their claims. VA accredits attorneys and agents only in their individual capacity – not for their organizations or companies.
- Impermissible uses of accreditation include: joint use for marketing financial products or promoting a financial services business.
- If VA determines that an accredited agent or attorney is using VA accreditation for an improper purpose, VA may suspend or cancel the individual's accreditation
- Note: Federal employees cannot be accredited due to the prohibition in 18 U.S.C. § 205.





# Representing VA Claimants

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## 2. Fees



# Fees

## History:

1862 – Agents' and attorneys' fees for preparing and prosecuting pension claims limited by Congress to \$5. The penalty for demanding or receiving fees exceeding the limit was a fine not exceeding \$300 or imprisonment at hard labor not exceeding two years, or both.

1864 – Congress increases the maximum fee to \$10.

1985 – Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305

1988 – Veterans Judicial Review Act repeals the limitation on fees (after a first final Board of Veterans' Appeals decision).

2006 – Public Law 109-461 expands VA's accreditation authority, further repeals the limitation on fees (after notice of disagreement filed), and repeals the misdemeanor penalty.



# Fees

- An accredited attorney may only charge claimants a fee after an agency of original jurisdiction (e.g., a VA regional office (RO)) has issued a decision on a claim, a notice of disagreement has been filed, and the attorney or agent has filed a power of attorney and a fee agreement with VA.
- This includes gifts/donations:
  - Ex: Representative cannot accept donation of something from claimant, such as paying for gas, as a thank you for assisting with VA benefits claim before a VA RO decision has been issued and NOD filed
- Note: More than half of complaints made against attorneys and agents are related to unlawful charging of fees.



# Fees

## Exceptions to the limitation on fees:

- In cases arising out of loans made, guaranteed, or insured under chapter 37, United States Code.
- For services in connection with representation on a claim before a NOD is filed if payment is made by a disinterested organization, entity, or other third party.
- An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. Persons living with the claimant, and the claimant's spouse, children, and parents are presumed not to be disinterested.



# Fees

## Fees for consultation:

VA's authority is limited to regulating the practice of attorneys before the Department. Clients who consult with attorneys concerning a variety of Federal benefits that may be available to them are not VA "claimants" under 38 C.F.R. § 14.627(h). VA does not have authority to regulate the fees charged for such consultations; therefore, no attorney or agent should rely on his or her VA accredited status in promoting such general, non-VA specific consultations.

## Fees for representation before VA:

Attorneys may charge fees for "representation" before the Department. Please review: 38 U.S.C. § 5904(c)(1) (fees "in connection with a proceeding before the Department"), and 38 C.F.R. §§ 14.627(n) (definition of "representation") and 14.636(c) (circumstances under which fees may be charged).



# Fees

**VA does not have a standard fee agreement.  
However, all fee agreements: 38 C.F.R. § 14.636(g)**

- **Must be in writing.**
- **Must be signed by both the claimant and the attorney.**
- **Must state the amount to be paid.**
- **Must state the specific terms under which payment will be rendered.**
- **Must state whether VA is to pay the attorney directly out of past-due benefits.**
- **See also the requirements in § 14.636(g)(1).**



# Fees

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**An agreement that that does not clearly specify whether VA is to pay fees directly out of past-due benefits or specifies a fee greater than 20 percent of past-due benefits shall be considered an arrangement under which the attorney is responsible for collecting any fees for representation directly from the claimant without assistance from VA.**

**38 C.F.R. § 14.636(g)(2).**



# Fees

## Fee agreements – Filing requirements:

- All fee agreements must be filed within 30 days of execution with both:
  - 1) VA's Office of the General Counsel (022D), 810 Vermont Avenue NW, Washington, DC 20420
  - AND
  - 2) Agency of Original Jurisdiction (AOJ) (the VA Regional Office (RO) )
- Note: VA OGC is working to eliminate this duplicative filing requirement so that fee agreements will only need to be filed with the AOJ/RO.





# Fees

## Reasonable fees:

- When allowed, fees charged by attorneys must be “reasonable.” Fees may be charged based on a fixed amount, an hourly rate, a percentage of past-due benefits recovered, or a combination of such bases. 38 C.F.R. § 14.636(e).
- Presumptions: A fee that does not exceed 20 percent of the past due amount of benefits awarded on a claim shall be presumed to be reasonable. A fee that exceeds 33 1/3 percent of past-due benefits shall be presumed to be unreasonable. These presumptions are rebuttable. 38 C.F.R. § 14.636(f).



# Fees

## Reasonableness factors: 38 C.F.R. § 14.636(e)

- The extent and type of services the representative provided
- The complexity of the case
- The level of skill and competence required of the representative in providing the services
- The amount of time the representative spent on the case
- The results the representative achieved, including the amount of any benefits recovered
- The level of review received on the claim and the level of the review at which the representative was retained
- Rates charged by other representatives for similar services
- Whether, and to what extent, the payment of fees is contingent upon the results achieved.



# How entitlement to reasonable fees for an attorney (or multiple attorneys) is assessed

- An attorney with a contingency-fee agreement who is discharged before an initial award of VA benefits is not automatically entitled to be paid the full amount called for in the fee agreement. Rather, the attorney may only receive a fee that “fairly and accurately” reflects his or her contribution to the ultimate outcome in the case. *Scates v. Principi*, 282 F.3d 1362 (Fed. Cir. 2002).
- In determining the amount of fees to be paid to an attorney, VA must take into account the *quantum meruit* analysis in *Scates* as well as the reasonableness factors in 38 C.F.R. § 14.636(e). *Lippman v. Shinseki*, 23 Vet. App. 243 (2009).
- VA OGC is responsible for making this reasonableness determination.



# Fees

## OGC's review of fee agreements: 38 C.F.R. § 14.636(i)

OGC may review a fee agreement upon its own motion or upon the motion of a claimant or appellant and may order a reduction in the fee called for if it finds the fee unreasonable.

- Review of fee agreements must be initiated within 120 days of final VA action on a claim by contacting the RO.
- OGC's review is limited to reasonableness if an RO has made an eligibility determination.
- The General Counsel's final decision on the reasonableness of fees may be appealed to the Board.



# Fees

## The statutory assessment: 38 C.F.R. § 14.636(h)(1)

- VA will charge and collect an assessment out of fees paid directly to an agent or attorney out of past-due benefits. See generally § 14.636(h) regarding direct payment of fees by VA.
- The amount of the assessment collected will be five percent of the fee required to be paid to the agent or attorney, but will not exceed \$100.
- This assessment is for the cost of processing a direct payment. Additional assessments may be necessary in cases where there is more than one direct payment.



# Fees

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***Can an attorney receive fees under the Equal Access to Justice Act (EAJA) for representation provided before the Veterans Court and under 38 U.S.C. § 5904(d) for the same work?***



# Fees

- Agents and attorneys may not retain both EAJA fees and fees under 38 U.S.C. § 5904(d) for the same work.
- However, under EAJA, the Veterans Court may order VA to pay a reasonable fee for the representation provided by an attorney if the following criteria are met:
  - Attorney represented claimant before the Veterans Court or the United States Court of Appeals for the Federal Circuit (EAJA fees are not available for representation before the Board of Veterans Appeals or a VA Regional Office);
  - That court found that VA committed an error in deciding your claim; and
  - VA's position was not substantially justified

**EAJA fees are separate from any fee the attorney receives from VA out of past due benefits or directly for representation on the same claim (under § 5904). The attorney is not permitted to keep both fees. The attorney must refund the smaller fee to the claimant.**



# Representing VA Claimants

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## 3. Power of Attorney





# Power of Attorney

**VA's POA form for individuals providing representation: 38 C.F.R. § 14.631.**

- **VA Form 21-22a, Appointment of Individual as Claimant's Representative**
- **A properly executed POA (signed by both the claimant and representative) is required to represent claimants before VA under the regulations.**



# Power of Attorney

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**A properly executed POA identifies the claimant's appointed representative and authorizes VA's disclosure of protected information to the representative.**

**VA will only recognize one representative of record at one time on a given claim.**



# Power of Attorney

Unless limited, a properly executed POA revokes all other existing POAs. An agent or attorney may limit the scope of their representation to a particular claim by so indicating on the 21-22a.

|                                                                                                                                                                                          |                       |                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------|
| 11. SIGNATURE OF CLAIMANT                                                                                                                                                                | 12. DATE OF SIGNATURE | 13. CLAIMANT'S RELATIONSHIP TO VETERAN<br><i>(If other than the veteran)</i> |
| 14. LIMITATIONS ON REPRESENTATION - AGENTS OR ATTORNEYS ONLY. <i>(Unless limited by an agent or attorney, this power of attorney revokes all previously existing powers of attorney)</i> |                       |                                                                              |
| My representation is limited to John Smith's claim for service connection for malaria.                                                                                                   |                       |                                                                              |
| 15. SIGNATURE OF REPRESENTATIVE                                                                                                                                                          | 16. DATE OF SIGNATURE |                                                                              |



# Power of Attorney

## Withdrawing from representation: 38 C.F.R. § 14.631(c)

- **Withdrawal is permissible if it would not adversely impact that claimant's interests or one or more of the following occurs:**
  - The claimant persists in an action that the attorney reasonably believes is fraudulent or criminal and is furthered through the representation.
  - The claimant fails to uphold an obligation to the attorney regarding the services of the attorney.
  - Other good cause for withdrawal exists.
- The procedures for withdrawal are in paragraph (c).
- Applies to withdrawal from representation before an agency of original jurisdiction. See 38 C.F.R. § 20.608 (withdrawing from representation before the Board).



# Representing VA Claimants

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## 4. Improper Conduct



# Improper Conduct

## VA's standards of conduct: 38 C.F.R. § 14.632

- **General obligations:**
  - Faithfully exercise duties.
  - Truthful in dealing with claimants and VA.
- **Attorneys shall:**
  - Provide competent representation.
  - Act with reasonable diligence and promptness.
- **Attorneys shall not:** See prohibited acts in § 14.632(c).
- **In addition to complying with § 14.632(a) through (c), attorneys must comply with the standards of conduct for the State(s) in which they are admitted to practice.**



# Improper Conduct

## Suspension and cancellation of accreditation:

- Generally, accreditation may be cancelled voluntarily at the request of the individual or organization. 38 C.F.R. § 14.633(a).
- Accreditation shall be cancelled when a representative, agent, or attorney no longer meets VA's accreditation requirements. 38 C.F.R § 14.633(b).
- Accreditation shall be cancelled when the General Counsel finds, by clear and convincing evidence, that the attorney has committed a prohibited act or conditions. See the items listed in 38 C.F.R. § 14.633(c).
- Accreditation shall be cancelled if the General Counsel finds that the performance of an attorney demonstrates a lack of degree of competence. See the list of factors considered in § 14.633(d).



# Improper Conduct

Accreditation shall be cancelled when the General Counsel finds clear and convincing evidence of:

- Violation of or refusal to comply with VA laws or regulations governing representation before VA.
- Knowingly presenting a fraudulent claim against the United States.
- Demanding or accepting unlawful compensation for representation concerning a claim.
- Knowingly presenting to VA a frivolous claim, issue, or argument.





# Improper Conduct

**Frivolous claims, issues, or arguments:**

**38 C.F.R. § 14.633(c)(4)**

- **A claim, issue, or argument is frivolous “if the individual providing representation under § 14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification, or reversal of existing law.”**



# Complaints to VA OGC

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**Complaints:** Complaints about the conduct of a representative may be submitted to VA OGC by anyone.

- **Example:** A local attorney assists you with your claim, but he is not VA accredited.
- **Example:** The claims agent helping you with your claim improperly charges you a fee just to help you fill out the VA benefits application.



# How do you file a complaint about a representative to VA OGC?

Where to send it: Complaints regarding unlawful activities, misconduct, or incompetent representation by a VA-accredited individual may be filed in any of the following ways:

1. Email: [ogcaccreditationmailbox@va.gov](mailto:ogcaccreditationmailbox@va.gov)
2. Fax: (202) 495-5457
3. Mail: Department of Veterans Affairs  
Office of the General Counsel (022D)  
810 Vermont Avenue, NW  
Washington, DC 20420

What to include in your complaint:

- A detailed summary of your allegations regarding the actions of the individual
- A completed and signed VA Form 3288 - Request for and Consent to Release of Information from Individual's Records
- Information regarding an accredited individual's suspension or disbarment by any court, bar, or Federal or State agency to which such individual was previously admitted to practice (if applicable)



## Maryland: Making a Difference by Protecting Veterans

- An unaccredited individual was improperly charging fees for assisting veterans with VA benefit claims. The individual was previously accredited by VA as a representative of DAV; however, his accreditation was cancelled after he tried to divert DAV clients to his own business.
- VA OGC referred this matter to the Maryland Attorney General (AG)'s office. The Maryland AG's Consumer Protection Division found him guilty of violating consumer protection laws by illegally taking money from veterans who sought assistance with filing VA benefit claims.
- The Final Order requires the return of all payments that were taken from veterans.



# Improper Conduct

- When OGC receives credible information indicating incompetence or misconduct it will provide the subject of the allegations an opportunity to respond.
- Complaints submitted about the representative to VA OGC may provide such credible information.
- The individual will be given an opportunity to take corrective action if the incompetence or misconduct did not cause harm to VA or the claimant. Otherwise, OGC initiates a formal inquiry using the procedures specified in § 14.633(e) through (h).



# Improper Conduct

**If the formal inquiry justifies further action:**

- **OGC provides the agent or attorney notice of the matter, opportunity to respond to the allegations, and the option of requesting a hearing.**
- **If a hearing is requested, a hearing officer who is not employed by OGC or the AOJ shall conduct a hearing at the VA RO nearest the agent's or attorney's place of business.**
- **The agent or attorney may be represented by counsel, present evidence, cross-examine witnesses.**
- **30 days from the close of the hearing, the hearing officer makes a recommended finding which is forwarded to the General Counsel for a final decision.**
- **The General Counsel's decision may be appealed to the Board.**



# Representing VA Claimants

## Additional information:

- **Accreditation information & law -** [www.va.gov/ogc/accreditation.asp](http://www.va.gov/ogc/accreditation.asp)
- **Accreditation search –** [www.va.gov/ogc/apps/accreditation/index.html](http://www.va.gov/ogc/apps/accreditation/index.html)
- **Frequently asked questions –** [www.va.gov/ogc/accred faqs.asp](http://www.va.gov/ogc/accred faqs.asp)
- **Accreditation mailbox –** [ogcaccreditationmailbox@va.gov](mailto:ogcaccreditationmailbox@va.gov)
- **Fee agreement mailbox –** [feeagreements.ogc@va.gov](mailto:feeagreements.ogc@va.gov)

## Current Accreditations:

- **7,272 VSO Representatives**
- **978 Attorneys**
- **65 Claims Agents**