Independent Accreditation for VA Claims Agent

Responsibilities and Ethical Obligations to practice Veterans Law

By Allen Gumpenberger, Independently Accredited Agent, Gumpslegal Veterans Service

National Organization of Veterans’ Advocates, Inc.

www.vetadvocates.org
38 CFR 14.626

• Purpose
  • Regulate representatives, agents and attorneys
  • Ensure that VA claimants have responsible and qualified representation
38 CFR 14.627

- Accreditation – authority to represent
- Agent – a person who met the standards of 14.629(b)
- Attorney – a member in good standing of a state bar and met the standards in 14.629(b)
- Recognition – Certification by VA of organizations to represent.

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38 CFR 14.629

Requirements for accreditation

• (b) Accreditation of Agents and Attorneys
• No individual may assist claimant unless accredited.
• Agents must pass a test, sample test will be provided
• Attorneys member of a bar in good-standing
• CLE course in 1\textsuperscript{st} 12 month period following initial accreditation
• To maintain CLE Course every other year thereafter

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CLE Requirements

• Must be at least 3 hours of instruction approved by a State Bar
• Topics at a minimum must include
  • Representation before VA
  • Claims Procedure
  • Basic Eligibility for VA benefits
  • Right to Appeal
  • Disability Compensation
  • DIC
  • Pension
• Upon Completion, certify training in writing to OGC

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• Application Requirements
  • Must establish good character and reputation
  • Qualified to render valuable assistance
  • Competent to advise and assist claimants before the VA.
  • Must abide by the standards in 14.632
38 CFR 14.629

• Conditions of Accreditation
  • Provide information about any court, bar, or Federal or State agency admitted to practice or authorized to appear.
  • For Agents, after determination of good character, must achieve a score of 75% or more on written examination
    • No applicant shall be allowed to sit for examination more than twice in any 6-month period.

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Clearly Defined Lines

• Once a VA Form 21-22a is submitted to the VA, any communication to the VA must be from you. (Act of preparing, presenting and prosecuting)
Why is this important?

• The VA expects you, the accredited advocate to be responsible for the representation of your client.

• No other advocate in your firm can perform the representation functions for you. It must be you.

• If you are using someone else’s POA, then everything that goes out to the VA, must be in the POA’s name and that POA must approve the document.

• Administrative support is fine.

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Consent & Authorization Form

• Recommended because it protects the accredited agent or attorney. You will get information from the VA on your client and you are ethically bound not to share that information with anyone without the client’s permission. Creating and using a form to mitigate this problem is a good idea.

• Not required to be sent to VA. If the veteran were ever to complain about the sharing of his information, you’ve covered yourself.

• Just like any legal service office or firm, creating standard fee agreements, document formats, legal research and available case law, training, support operations, and marketing is expected. All of which, create a strong platform for you to practice VA law for your clients and provide quality representation.

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38 CFR 14.631

(a)

• POA – VA Form 21-22 and 21-22a
• Describes how this document is to be completed and what must be included.

(b)

• VA may assume that a POA executed by a representative or a representative’s office of an organization recognized in 38 CFR 14.628 that the entire organization is appointed.
38 CFR 14.631

(c)

- POA may withdraw if such withdrawal will not adversely affect the claimant’s interest.
- BVA appeals after 90 days certified 38 CFR 20.608
- Permissible if the POA believes the claimant is acting unethically or fraudulently.
- Must give the claimant notice
- Must return any VA records to VARO or claimant or forward to the veterans newly appointed POA.
38 CFR 14.631

(d)

Questions concerning the validity of a POA should be referred to Regional Counsel. May be appealed to General Counsel.
38 CFR 14.631

(e)

(1) Only 1 POA may be recognized for a particular claim except as provided under 14.629(c) and paragraph (f)(2) of this section.

(2) If an Agent or Attorney limits the scope of representation to a particular claim, such authority shall constitute a revocation of any general POA during the pendency of that particular claim and only for that claim.
Procedure

• Submit a Completed VA Form 21a
  • Character References are Required
  • VA OGC will send them a letter to collect their reference to include a brief synopsis of their association with you, the length of your association, description of the relationship, and ask that they quantify your character and qualifications to assist veterans.
  • OGC will send you notice confirming they received your application.
    • They will send an examination to the VA Regional Counsel’s Office along with a letter to you with instructions. These instructions will direct you to contact the VA Regional Counsel’s office to coordinate the appointment to take the written examination.
The EXAM

• Recommend bringing a number 2 pencil. They did not permit any electronic devices like a cell phone. They showed me to a desk and handed me the test.
• For me, the examination was 25 multiple choice questions.
• I had 90 minutes to complete the test.
• In order to pass, you must answer at least 19 correctly.

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How to Prepare

- I recommend that you carefully review 38 CFR:
  Part 1 – General
    - Waivers and Overpayments
  Part 3 – Adjudication
    - Service Connection
    - Special Monthly Compensation
    - Dependency Indemnity Compensation
    - Improved Pension
  Part 4
    - Evaluation of Disabilities

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How to Prepare (Cont.)

• I recommend that you carefully review 38 CFR:
  Part 14 - Accreditation
  • VA OGC/Legal Services
  • Accreditation
  • Fees and Expenses
  Part 19 and 20 - Appeals
  • Notice of Disagreement
  • Statement of the Case
  • Supplemental Statement of the Case
  • Substantive Appeals
  • Hearings
  • Simultaneously Contested Claims

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Additional Study

• Title 38 USC
  • Chapter 1- General
  • Chapter 11 – Compensation for Service-Connected Disability or Death
  • Chapter 13 – Dependency and Indemnity Compensation
  • Chapter 15 – Pension
  • Chapter 51 – Claims, Effective Dates, and Payments
  • Chapter 53 – Special Provisions Relating to Benefits
  • Chapter 59 – Agents and Attorneys
  • Chapter 71 – Board of Veterans Appeals

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Questions

• Take the sample test I provided.
  • Look up the answers to each question.
  • Once you have all the answers, get them down.
  • If you can pass it easily, then I suspect you are ready.

• My Contact Information
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