

THE AMERICAN LEGION



# Code *of* Procedure

Veterans Affairs and Rehabilitation



One of the most important responsibilities of the Accredited Representative is to ensure that the claimant receives due process under the laws and regulations of the Department of Veterans Affairs.

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# Advocates

- ❖ **We provide fair representation, assistance, and counseling to ensure our claimants receive full due process.**
  
- ❖ **In order to be recognized as an accredited representative of a National Service Organization the individual must:**
  - ❖ Certify to the Secretary (of the VA) that no fees will be solicited or collected in return for services provided for claims and/or appeals
  - ❖ File the proper Power of Attorney (POA) form with the VA
    - ❖ Services rendered, by a retired military person, for claims occurring after exit from active duty are not a violation of the regulations pertaining to accredited representatives



# POA

## ❖ POA may be accepted from the following

- ❖ The veteran
- ❖ An incompetent veterans legally constituted guardian, parent, spouse, near relative, or manager of institution where veteran is maintained
- ❖ A deceased veteran's dependent or designated beneficiaries, or if incompetent, the fiduciaries of such persons
- ❖ Persons entitled to reimbursement incurred in the connection with the last sickness and burial of the veteran

## ❖ POA may NOT be accepted from the following

- ❖ Any person whose interests are detrimental or adverse to those of the veteran
- ❖ A claim in which two or more persons are claimants to the same monetary benefit
  - ❖ Examples are apportionment claims by an estranged spouse and claims which are simultaneously contested

## ❖ POA rules

- ❖ A dependent claimant must sign a new POA after death of veteran
- ❖ POA that would result in dual representation may not be accepted
- ❖ If a BVA appeal, with D.C. hearing, is requested the POA must be changed to straight American Legion



# POA Revocation

- ❖ **Power of Attorney MAY be revoked for reason such as:**
  - ❖ Tampering with, altering evidence, willfully providing false information
  - ❖ Refusal to cooperate and maintain an effective working relationship
  - ❖ **Threats or acts of violence**
  - ❖ Harassment by phone or in person
  - ❖ If further representation may give rise to conflict of interest or privacy violation
  - ❖ **The claim has no basis in law (not adjudicative action)**
  - ❖ The benefits being received are contrary to law or regulation
  - ❖ Representation of a co-worker or friend may present inadvertent disclosure of confidential personal information and give rise to unreasonable expectations
  
- ❖ **POA revocation special considerations:**
  - ❖ POA may not be withdrawn based on personal prejudice or discomfort
  - ❖ POA should not be accepted for pending appeal unless authorized by DSO and VA&R



# Duties of the Accredited VSO

- ❖ Prepare, present, and prosecute claims IAW the laws administered by DVA
- ❖ Communicate to claimants the extent and limitation of representation
- ❖ Assess the facts and review prior claims history
- ❖ Reconcile the facts with the law
- ❖ Communicate eligibility criteria, necessary evidence, and the process of adjudication
- ❖ Discuss tactics and strategies with claimants
- ❖ Achieve the best possible effective date
- ❖ Develop a complete record of evidence and documents
- ❖ Manage deadlines applicable to informal claims, appellate windows, waiver requests, etc.
- ❖ Develop relationships with DVA adjudicators/administrators to assist our clients
- ❖ Ensure VA complies with all duties to notify, assist, consider evidence, infer issues, etc.
- ❖ Safeguard as confidential any veteran (PII) information pertaining to claims and appeals

*NOTE: An accredited representative may not sign a VAF 21-526 or Eligibility Verification Report (EVR)*



# 38 C.F.R. 3.103

“Proceedings before the VA are ex parte in nature. It is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.”





# 38 U.S.C. §5103A

“The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant’s claim for a benefit under a law administered by the Secretary.”

*Question: What is reasonable? Who has the final responsibility to secure government held evidence? Privately held evidence?*

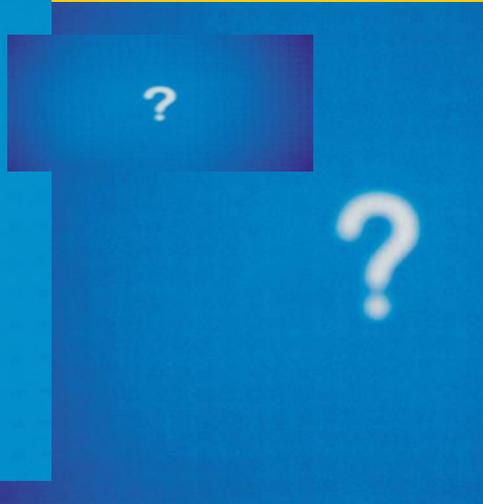
•The final burden of proof in establishing a claim for DVA benefits rests with the claimant.





# VSO Duties and Responsibilities

**Is a Service Officer obligated to do more than the VA in helping a claimant obtain VA benefits? *How? Why?***





# Standards of Conduct

- **VA statutes and regulations: 38 C.F.R. 14.627 thru 14.633**
- **American Legion Code of Procedures** (May 20, 2004)





# Accreditation Revoked

- ❖ **Accreditation can be revoked by DVA under certain circumstances including:**
  - ❖ Unlawful, unprofessional, or unethical practice which shall include but not be limited to the following—
    - ❖ **Deceiving, misleading** or threatening a claimant or prospective claimant
    - ❖ Neglecting to prosecute a claim for 6 months or more
    - ❖ Failing to furnish a reasonable response within 90 days of request for evidence
    - ❖ **Willfully** withholding an application for benefits
    - ❖ Accreditation shall be canceled when the General Counsel finds an agent's, attorney's, or representative's performance before DVA **demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veterans' benefits.** (See 38 C.F.R. 14.633)



# DSO Actions

- ❖ **Policy matters requiring VA&R Commission action should be sent to**
  - ❖ Director, National VA&R Commission  
The American Legion  
1608 K Street, NW  
Washington, DC 20006
- ❖ **May submit additional comments on the merits of BVA appeal to The American Legion BVA unit**
- ❖ **May not provide representation in a Social Security Administration appeal before SSA review boards**
- ❖ **Should notify appellant of timelines involved with filing timely NOD, VAF 9 and CAVC appeal**

*NOTE: Review current Code of Procedures for details on matters requiring special consideration and VA&R Commission review/approval*



# Fugitive Felons

❖ **Federal law prohibits payment of almost all VA benefits to veterans and dependents while in fugitive felon status. A fugitive felon is defined as:**

- ❖ A person who “is fleeing to avoid prosecution, custody or confinement for a felony, including those that have violated probation
- ❖ The term “felony” includes state defined high misdemeanors that would be classified as felonies under federal law

❖ **The American Legion proposes that the following be included in letters to fugitive felons:**

- ❖ Effective date of proposed termination
- ❖ The fact that beneficiary is considered a FF
- ❖ The reason VA believes beneficiary to be a FF
- ❖ A request for information showing the beneficiary is not a FF
- ❖ How and where beneficiary can contact VA
- ❖ An explanation of how VA benefits may be reinstated
- ❖ An explanation as to the one year time limit to reopen claim after dismissal



# Check on Learning

- What are three of the duties of the DSO/VSO?
- What are three of the clients duties?
- What is the time limit for filing a Form 9 after the SOC/SSOC is received?
- What are three reasons that accreditation may be revoked?
- Name three reasons a POA may be revoked?
- Does the DSO/VSO have a legal obligation to inform the VA if a beneficiary is receiving benefits which are in excess of the legally based entitlement?
- Who may a POA be accepted from? Who may a POA not be accepted from?
- Fill in the blank “We provide fair \_\_\_\_\_, assistance, and counseling to ensure our claimants receive full \_\_\_\_\_ \_\_\_\_\_”.