## Section A. General Information on Power of Attorney (POA)

#### Overview

|  |  |
| --- | --- |
| In this Section | This section contains the following topics: |

|  |  |  |
| --- | --- | --- |
| Topic | Topic Name | See Page |
| [1](#Topic1) | VA Power of Attorney (POA) Versus General POA Under State Law | 3-A-2 |
| [2](#Topic2) | Appointing a Power of Attorney (POA) Representative | 3-A-3 |
| [3](#Topic3) | Power of Attorney (POA) Representation for Incompetent Claimants | 3-A-7 |
| [4](#Topic4) | Extent of Authority | 3-A-8 |
| [5](#Topic5) | Authority to Review a Claims Folder | 3-A-10 |
| [6](#Topic6) | Requests for Exclusive Contact | 3-A-14 |
| [7](#Topic7) | Revoking and Terminating Representation | 3-A-16 |
| [8](#Topic8) | Representation after the Claimant’s Death | 3-A-18 |

#### 1. VA Power of Attorney (POA) Versus General POA Under State Law

|  |  |
| --- | --- |
| Change Date | August 17, 2004 |

|  |  |
| --- | --- |
| a. Effect of POA Under State Law on VA Claims Representation  | The execution by a claimant of a power of attorney (POA) under State law has *no* effect for the purposes of prosecuting a VA claim. In order to be recognized by Department of Veterans Affairs (VA), a claimant’s representative must be appointed according to the procedures in this chapter.***Reference***: For information on appointing an accredited representative of a service organization, agent, non-licensed individual, or attorney representative, see M21-1MR, Part I, 3.A.2. |

#### 2. Appointing a Power of Attorney (POA) Representative

|  |  |
| --- | --- |
| Introduction | This topic contains information on appointing a POA representative, including* [requirements to represent claimants](#a2)
* [definition of declaration of representation](#b2)
* [limited versus unlimited representation](#c2), and
* [limited attorney representation](#d2).
 |

|  |  |
| --- | --- |
| Change Date | August 4, 2009 |

Continued on next page

2. Appointing a Power of Attorney (POA) Representative, Continued

|  |  |
| --- | --- |
| a. Requirements to Represent Claimants | The table below describes the requirements for POA representatives to represent claimants. |

|  |  |
| --- | --- |
| Type of Representation | Requirements |
| Accredited representative of a service organization, agent, or attorney | Must obtain recognition from VA’s Office of General Counsel in order to represent claimants. Refer any person or group to the Office of General Counsel for accreditation.***References***: For more information on* requirements for accredited representatives of a service organization, agents, and attorneys to obtain recognition, see [38 CFR 14.629](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_629.DOC), and
* a list of accredited representatives of service organizations, agents, and attorneys maintained by the Office of General Counsel, see the [Office of the General Counsel’s accreditation search page](http://www.va.gov/ogc/apps/accreditation/index.html)*.*
 |
| Non-licensed individual | May represent a claimant on a one-time, one claim basis per the provisions of [38 CFR 14.630](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_630.DOC). The individual may only represent one VA claimant unless a request is made to the VA’s Office of General Counsel. |

|  |
| --- |
|  ***Note***: If a person purporting to be a representative does not fit into one of the categories above, write to the individual (and provide a copy to the claimant) explaining that * he/she does not appear to fit into one of the categories of permitted representatives per [38 CFR 14.629](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_629.DOC) and [38 CFR 14.630](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_630.DOC), and
* VA will not recognize the representation unless he/she shows VA that he/she does fit into one of the categories of permitted representatives.
 |

Continued on next page

2. Appointing a Power of Attorney (POA) Representative, Continued

|  |  |
| --- | --- |
| b. Definition: Declaration of Representation | A ***declaration of representation*** is the form a claimant uses to designate a person or organization as his or her representative for VA purposes. |

|  |  |
| --- | --- |
| A/An … | May represent a claimant if VA receives … |
| accredited representative of a service organization | *VA Form 21-22, Appointment of Veterans Service Organization as Claimant’s Representative,* signed by the claimant and the representative that shows the service organization as representative. |
| accredited agent | *VA Form 21-22a, Appointment of Individual as Claimant’s Representative,* signed by the claimant. |
| non-licensed individual | a declaration of representation that complies with the provisions outlined in [38 CFR 14.630](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_630.DOC).***Note***: The representation is for a one-time, one-claim basis only. |
| accredited attorney | *VA Form 21-22a* signed by the claimant and the attorney. |

|  |
| --- |
| ***Note***: If the claimant’s attorney is not listed on the [Office of the General Counsel’s accreditation search page](http://www.va.gov/ogc/apps/accreditation/index.html), the regional office’s (RO’s) Agent and Attorney Fee Coordinator will advise* the attorney that VA will not recognize him/her until accredited, and
* the claimant that he/she may
* seek other representation, or
* proceed without representation until the attorney is accredited.

***References***: For information on * consent to release information, see M21-1MR, Part I, 3.A.5.a,
* how to acknowledge a POA representative, see M21-1MR, Part I, 3.B.9, and
* updating the Benefits Delivery Network (BDN)/Share, see M21-1MR, Part I, 3.B.11.
 |

Continued on next page

2. Appointing a Power of Attorney (POA) Representative, Continued

|  |  |
| --- | --- |
| c. Unlimited Versus Limited Representation  | Assume that representation by an accredited representative of a service organization, agent, or attorney is unlimited, meaning the representative represents the claimant for all VA claims, unless *VA Form 21-22*, *VA Form 21-22a*, or the declaration of representation shows otherwise. A declaration of representation by a non-licensed individual per the provisions of [38 CFR 14.630](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_630.DOC) is limited to one claim by its very nature. |

|  |  |
| --- | --- |
| d. Limited Attorney Representation | Review an attorney’s declaration of representation to determine if the representation is limited or unlimited. If it is limited to a specific claim or claims, any unlimited representation that was in effect at the time of the limited representation was received by VA continues in effect for all other claims. If the representation is unlimited, see M21-1MR, Part I, 3.A.7.c.***References***: For more information on* acknowledging limited attorney representation, see M21-1MR, Part I, 3.B.9, and
* updating BDN/Share and MAP-D when a limited declaration of representation is received, see M21-1MR, Part I, 3.B.11
 |

#### 3. Power of Attorney (POA) Representation of Incompetent Claimants

|  |  |
| --- | --- |
| Introduction | This topic contains information on POArepresentation of incompetent claimants, including* [fiduciary appointment](#a3)
* [representation for claimants in the process of being declared incompetent](#b3), and
* [appointing POA representation to establish competency](#c3).
 |

|  |  |
| --- | --- |
| Change Date | August 17, 2004 |

|  |  |
| --- | --- |
| a. Fiduciary Appointment  | If the claimant is unable to handle his/her own VA benefit payments, VA appoints a fiduciary to handle the payment of VA funds. |

|  |  |
| --- | --- |
| b. Representation for Claimants in the Process of Being Declared Incompetent | Until a fiduciary is appointed for a claimant in the process of being declared incompetent, accept the appointment of a POA representative from any of the following people in the following order* claimant
* spouse
* mother or father, or
* next of kin.

Once VA appoints a fiduciary, he/she may appoint a new POA representative. The prior POA is *not* automatically revoked. |

|  |  |
| --- | --- |
| c. Appointing POA Representation to Establish Competency  | An incompetent claimant may appoint a POA representative for the purpose of attempting to establish his/her competency. |

#### 4. Extent of Authority

|  |  |
| --- | --- |
| Introduction | This topic contains information on the extent of a representative’s authority, including* [general duties of a representative](#a4)
* [assistants to attorney representatives](#b4)
* [representative’s access to IRS records](#c4), and

* [questions or disputes about representatives](#d4).
 |

|  |  |
| --- | --- |
| Change Date | April 25, 2007 |

|  |  |
| --- | --- |
| a. General Duties of a Representative | A representative is authorized to prepare, present, and prosecute a claimant’s claim and has the authority to* review the claimant’s records
* present evidence on behalf of the claimant
* sign an informal claim, a notice of disagreement (NOD), or a substantive appeal on behalf of the claimant, and
* withdraw an appeal.

***Notes***:* A POA may not sign formal (or original) applications for Veterans benefits or other forms requiring claimant certification, such as eligibility verification reports. However, a POA may sign informal claims on behalf of the claimant, because under [38 CFR 3.155](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_155.DOC), an informal claim may be accepted without the claimant’s signature. Informal claims, which are often filed on *VA Form 21-4138, Statement in Support of Claim,* include, but are not limited to, claims for increase or to reopen.
* The representative is furnished copies of all correspondence (including electronic correspondence) sent to the claimant regarding a pending claim or appeal, or in response to an informal claim.

***References***: For more information on * reviewing the claimant’s records, see M21-1MR, Part I, 3.A.5,
* signing an informal claim, see [38 CFR 3.155](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_155.DOC),
* signing an NOD or substantive appeal, see [38 CFR 20.301](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART20/S20_300.DOC), and
* withdrawing an appeal, see [38 CFR 20.204](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART20/S20_204.DOC).
 |

Continued on next page

4. Extent of Authority, Continued

|  |  |
| --- | --- |
| b. Assistants to Attorney Representatives | If a claimant has an attorney representative, law students, legal interns, and paralegals may participate in the prosecution of a VA claim and be present at any hearing if* they are operating under the direct supervision of an attorney representative, and
* the attorney representative, or any associate of the attorney representative, is present at any hearing.

***Reference***: For more information on the role of assistants to attorney representatives, see [38 CFR 14.629(c)(3)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_629.DOC). |

|  |  |
| --- | --- |
| c. Representative’s Access to IRS Records | Special procedures govern a representative’s access to Internal Revenue Service (IRS) tax return information in the possession of VA. Refer to these special procedures governing the income match with IRS for information about a representative’s right of access to these materials.***Reference***: For more information on a representative’s right to IRS tax return information, see M21-1MR, Part X, 10.8***Note***: When a claimant is subject to an Income Verification Match, the assignment of the service organization as the claimant’s representative is only valid for five years from the date the form is signed for purposes restricted to the verification match. |

|  |  |
| --- | --- |
| d. Questions or Disputes About Representatives | Refer any legal questions or disputes about the extent of person’s authority to serve as a representative to the Regional Counsel.***Reference***: For more information about referring questions and disputes to the Regional Counsel, see* [38 CFR 14.629](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_629.DOC), and
* [38 CFR 14.631(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_631.DOC).
 |

#### 5. Authority to Review a Claims Folder

|  |  |
| --- | --- |
| Introduction | This topic contains information on representatives’ authority to review a claims folder, including* [authority to review a claims folde](#a5)r
* [authority for contractors to review a claims folder](#b5)
* [assistance in reviewing the claims folder](#c5)
* [records protected by 38 U.S.C. 7332](#d5)
* [handling claims folder reviews by representatives of non-Veteran claimants in cases where the Veteran is living](#e5), and
* [location of the claims folder review](#f5).
 |

|  |  |
| --- | --- |
| Change Date | August 4, 2009 |

Continued on next page

5. Authority to Review a Claims Folder, Continued

|  |  |
| --- | --- |
| a. Authority to Review Claims Folder | Representatives have the authority to review information in the claimant’s claims folder provided there is proper authorization from the claimant to do so. If the representative holds POA for only one claim, the representative is permitted to review the information in the claims folder pertaining *only* to that claim, unless the claimant specifically consents or authorizes the release of other information.***Notes regarding attorney representation***:* A declaration of representation written on an attorney’s letterhead is not sufficient to release information. A *VA Form 21-22a* signed by the claimant is required. For more information, see [5 U.S.C. 552a(b)](http://www.law.cornell.edu/uscode/text/5/552a), [38 U.S.C. 5701](http://www.law.cornell.edu/uscode/text/38/5701), and [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332).
* Without a *VA Form 21-22a* signed by the claimant, an attorney does not have the authority to review the claims folder or receive any correspondence from VA including development letters, decision letters, or copies thereof.
* If a *VA Form 21-22a* is not signed by the claimant, back-file the form to show a signature is not of record and update MAP-D by noting there is no authority to disclose information to the attorney.

***Exception***: An RO may release a claimant’s records to his/her attorney without a signed *VA Form 21-22a* being of record when the RO receives a* request from the Office of General Counsel Professional Group VII regarding representation of claimants in litigation before the U.S. Court of Appeals for Veterans Claims (CAVC), and
* signed statement from the claimant authorizing VA to provide a copy of his/her claims folder to the attorney representing the claimant.

***References***: For information on* a POA’s review of completed rating decisions, see M21-1MR, Part III, Subpart iv, 7.B.5.a, and
* CAVC remanded appeals, see M21-1MR, Part I, 5.I.45.
 |

Continued on next page

5. Authority to Review a Claims Folder, Continued

|  |  |
| --- | --- |
| b. Authority for Contractors to Review Claims Folder  | Allow contractors (individual or entity) hired by the representative holding POA to review information in the claims folder *only if* the claimant gives specific written consent to release his/her records to the representative’s contractors.***Example***: If Disabled American Veterans (DAV) holds POA for a claimant, do not allow a private physician hired by DAV to review the claims folder unless the claims folder contains specific written consent from the claimant on *VA Form 21-22*, or in a separate signed statement, to release information to contractors of DAV. If the claims folder does not contain the claimant’s written consent, limit review of the claims folder to DAV and its employees. |

|  |  |
| --- | --- |
| c. Assistance in Reviewing Claims Folder | Obtain specific written consent from the claimant before allowing a law student, legal intern, or paralegal to access the claimant’s claims folder.***Reference***: For more information on law students, legal interns, or paralegals accessing a claimant’s claims folder, see [38 CFR 14.629(c)(3)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_629.DOC). |

|  |  |
| --- | --- |
| d. Records Protected by 38 U.S.C. 7332 | The claimant must give specific consent in order to release information in the claims folder that is protected under the provisions of [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332). This information relates to* drug abuse
* alcoholism or alcohol abuse
* infection with HIV, or
* sickle cell anemia.

If there is no consent to release records protected by [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332), send the claimant a* *VA Form 21-22* or *21-22a,* or
* *VA Form 10-5345, Request and Authorization to Release Medical Records or Health Information*.
 |

Continued on next page

5. Authority to Review a Claims Folder, Continued

|  |  |
| --- | --- |
| e. Handling Claims Folder Reviews by Representives of Non-Veteran Claimants in Cases Where the Veteran is Living | In the case of a living Veteran, if a representative is acting under a POA from any person *not* acting on behalf of the Veteran, do *not** permit the representative to review the records of the Veteran, or
* furnish any information to which the person is not entitled or information not relating to such person alone.

***Reference***: For more information about representation of a claimant not acting on behalf of the Veteran, see [38 CFR 1.525(a)(2)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART1/S1_525.DOC). |

|  |  |
| --- | --- |
| f. Location of Claims Folder Review | A representative who holds a written authorization or consent to review a claims folder may review the claims folder within a regional office (RO) in a space designated for such reviews.If the authorization or consent is limited, then the representative may review *only* the information in the claims folder that the Veteran has authorized or consented for the representative to review.The regional office director may permit accredited representatives of service organizations to review a claims folder at the desk of the accredited representative.***References***: For more information on* the review of the claims folder, see [38 CFR 1.525](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART1/S1_525.DOC), and

limited representation, see M21-1MR, Part I, 3.A.2.c. |

#### 6. Requests for Exclusive Contact

|  |  |
| --- | --- |
| Introduction | VA does not honor requests by an attorney for exclusive contact to restrict the communication between VA and the claimant. This topic contains information on requests for exclusive contact, including* [definition of ***exclusive contact***](#a6), and
* [handling requests for exclusive contact](#b6).
 |

|  |  |
| --- | --- |
| Change Date | November 15, 2012 |

|  |  |
| --- | --- |
| a. Definition: Exclusive Contact | The term ***exclusive contact*** refers to sending communications with the claimant directly to a representative and generally *not* communicating directly with the claimant. |

Continued on next page

6. Requests for Exclusive Contact, Continued

|  |  |
| --- | --- |
| b. Handling Requests for Exclusive Contact | In any case where an attorney requests exclusive contact in writing, send the attorney a letter incorporating the following notice:*We are unable to comply with your request that we correspond exclusively with you and not with the VA claimant you represent.* *While VA has attempted in the past to accommodate exclusive contact requests the agency has found that our attempts to comply with these requests adversely impacted the timely completion of essential ministerial functions, such as responding to phone inquiries from claimants and the issuance of standard benefit information letters.  Rather, as required by regulatory and statutory provisions, we have determined that corresponding directly with the VA claimant with a copy of each and every communication to the representative is the best means for keeping all interested persons up-to-date about VA’s actions regarding a particular claimant.  This course of action is consistent with the non-adversarial nature of the VA benefits adjudication system and with VA statutes and regulations.**To this end, section 5104(a) of title 38, United States Code, and its implementing regulation, 38 C.F.R. § 3.103, provide that VA must send notice of any decision to the claimant with a copy to the claimant's representative. VA statutes and regulations do not require a process whereby VA maintains "exclusive contact" with a representative in lieu of the VA claimant. At the same time, despite any request for exclusive contact with a representative, VA has always sent automatically generated correspondence to VA claimants and has responded to claimants who seek information directly from VA.  As a result of our careful review of relevant VA statutes, regulations and procedures, we have determined that prohibiting veterans from receiving information, any information, about their claims, or limiting it in some fashion, is not a process that is beneficial to veterans, their dependents or survivors. We can assure you, however, that as long as you represent a VA claimant, you will be sent copies of any and all notices, decisions or other written communications at the same time as the claimant is sent such notice, decision or communication.****Note***: In the case of a verbal request for exclusive contact or inquiry about exclusive contact you may use the above to structure your response. Remember to document any contacts on a *VA Form 21-0820*, *Report of General Information*.  |

#### 7. Revoking and Terminating Representation

|  |  |
| --- | --- |
| Introduction | This topic contains information on revoking and terminating representation, including* [when claimants may revoke or terminate representation](#a7)
* [when representatives may revoke or terminate representation](#b7)
* [when representation is automatically revoked](#c7), and
* [handling revoked or terminated representation](#d7).
 |

|  |  |
| --- | --- |
| Change Date | September 23, 2014 |

|  |  |
| --- | --- |
| a. When Claimants May Revoke or Terminate Representation | A claimant, claimant’s guardian, or VA fiduciary may revoke or terminate his/her relationship with a representative at any time by informing VA.***Note***: In some instances, attorney fees may still be payable.***Reference***: For more information on attorney fees when the attorney no longer represents the claimant, see M21-1MR, Part I, 3.C.17.c. |

|  |  |
| --- | --- |
| b. When Representatives May Revoke or Terminate Representation | A representative may revoke or terminate the representation by notifying the claimant and VA in writing, if doing so would not adversely impact the claimant’s interests. ***Note***: If the Board of Veterans’ Appeals (BVA) has jurisdiction over the claims folder, the representative must obtain permission from BVA to revoke or terminate his/her representation. ***References***: For more information on * withdrawing representation, see [38 CFR 14.631](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART14/S14_631.DOC), and
* withdrawing representation before the BVA, see [38 CFR 20.608](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKA/PART20/S20_608.DOC)
 |

 Continued on next page

7. Revoking and Terminating Representation, Continued

|  |  |
| --- | --- |
| c. When Representation Is Automatically Revoked | Representation is automatically revoked if * a new unlimited declaration of representation is received, or
* the claimant dies.

***Important***: If a limited declaration is received, any prior unlimited declaration of representation remains in effect for all other claims or issues *not* named in the limited declaration of representation. ***Note***: When in doubt of the scope or authenticity of the declaration, request clarification from the claimant. Back-file any such clarification in the claims file. ***Reference***: For more information on representation after death, see M21-1MR, Part I, 3.A.8. |

|  |  |
| --- | --- |
| d. Handling Revoked or Terminated Representation | Annotate the revoked or terminated declaration of representation and return it to the prior representative. Keep a copy of the revoked declaration of representation on the right hand side of the claims folder. |

#### 8. Representation After the Claimant’s Death

|  |  |
| --- | --- |
| Change Date | September 23, 2014 |

|  |  |
| --- | --- |
| a. General Policy on Representation After the Claimant’s death | Representation based on a POA signed by the claimant during his/her lifetime ends with the death of the claimant. In order for the same representative to represent a survivor, the survivor must execute a separate POA.***Reference***: For more information on this general policy, see [*Smith (Irma) v. Brown*](http://vbaw.vba.va.gov/bl/21/Advisory/DADS/1997dads/Smith_i.doc)*,* 10 Vet.App. 330 (1997). |