

ETHICS

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The Service Officer shall maintain high professional standards in dealing with other service officers, (federal, state, and local) and other persons and agencies as necessary in service to his/her client.

The Service Officer will provide services without prejudice to all persons making a claim to the Department of Veterans Affairs.

The Service Officer will, to the best of his/her ability, maintain a working knowledge of all rules and regulations concerning veterans' benefits and will strive to keep such knowledge updated in light of constantly changing laws and regulations.

Virtually all difficult ethical problems arise from conflict between a VSO's responsibilities to clients, to the VA and to the VSO's own interest in remaining an upright person while earning a satisfactory living.

**Professional and moral judgment
guided by the basic principles
underlying the Rules.**

38 C.F.R. § 14.632

Standards of conduct for persons providing representation before the Department

(a)

(1) All persons acting on behalf of a claimant shall faithfully execute their duties as individuals providing representation on a particular claim under § 14.630, representatives, agents, or attorneys.

(2) All individuals providing representation are required to be truthful in their dealings with claimants and VA.

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(b) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall:

1) Provide claimants with competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations;

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2) Act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.

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(c) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall not:

(1) Violate the standards of conduct as described in this section;

(2) Circumvent a rule of conduct through the actions of another;

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(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;

(4) Violate any of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations;

(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation;

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- (6) Solicit, receive, or enter into agreements for gifts related to services for which a fee could not lawfully be charged;**
- (7) Delay, without good cause, the processing of a claim at any stage of the administrative process;**

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(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA;

(9) Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA;

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(10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation; or

(11) Engage in any other unlawful or unethical conduct.

LAWYERS

(d) In addition to complying with standards of conduct for practice before VA in paragraphs (a) through (c) of this section, an attorney shall not, in providing representation to a claimant before VA, engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which the attorney is licensed to practice law.

INTERPRETING 38 C.F.R. §§14.632(B)(2) AND (C)(3)

- **You represent Vet seeking SC for knee disability**
- **Vet got medical opinions from 2 doctors who treated his knee one favorable and one negative**
- **RO asked Vet to provide release form for or records from all doctors who have treated his knee disability**

INTERPRETING 38 C.F.R. §§14.632(B)(2) AND (C)(3)

- **VA would not know about doctor who provided negative opinion unless Vet provides this info**

What should you do?

**INTERPRETING 38 C.F.R.
§§14.632(B)(2) AND (C)(3)**

**A. Advise Vet not to inform RO about
doctor who provided negative opinion**

**B. Advise Vet he must inform VA about
both doctors**

INTERPRETING 38 C.F.R. §§14.632(B)(2) AND (C)(3)

C. Advise Vet you could no longer represent him if he decided not to inform VA about doctor who provided negative opinion, but you would not divulge this information to anyone

D. Tell Vet to submit treatment records, but not negative nexus opinion

Going All Out vs Minimum Acceptable Standard

How hard should you work for a particular claimant?

What is the minimum acceptable standard for a VSO?

Minimum includes, but is not limited to:

- **Interview Vet**
- **Review file to see if other claims should be filed**
 - **Vet relies on you, the expert, to help identify potential benefits**
- **Submit an ITF / Supplemental Claim to protect effective date**
- **Review c-file / STRs**
- **After review of file & interview with Vet, tell Vet what evidence is needed for VA to grant claim(s)**

What is going all out for a VSO?

Do all the above, plus...

- **Identify medical experts and write to them for favorable opinions**
- **Write letter to medical expert that includes:**
 - **Summarizing facts,**
 - **Explaining VA rules, and**
 - **Standard of proof that applies to medical opinion**
- **Help Vet prepare lay statement**
- **Interview family / buddies and help prepare lay statements for them to sign**

Diligent Advocacy

Definition: characterized by steady, earnest, and energetic effort; showing care and conscientiousness in one's work or duties

SCENARIO 1

Caseload: Too many? Not enough time?

- You can provide diligent advocacy to each of your Vets by performing a few extra hours of work each week.**
- Your supervisor is impressed with the quality of your work and increases your caseload.**
- You find yourself needing to work a few extra hours each day and even on weekends. You start to lose sleep and, for the first time ever, miss a deadline for filing a completed claim post ITF.**

WHAT SHOULD YOU DO ABOUT YOUR CURRENT WORKLOAD?

- **Tell yourself it was a onetime mistake and keep grinding because you want to do a good job**
- **Let your supervisor know what happened and ask her to reduce your workload**

Despite expressing your concerns to your supervisor, she does not reduce your caseload. You are still worried about the quality of your work for your clients.

What do you do?

- **Inform your clients about your workload and the quality of representation so they can make an informed decision.**
- **Tell your supervisor you must inform your clients about your workload and the quality of your representation unless your caseload is reduced**
- **See if any colleagues can take some of your cases and ask your supervisor if that's okay**

DIMINISHED CAPACITY

General Rule:

When a client's capacity to make an adequate decision is diminished because of "minority, mental impairment, or some other reason" an advocate "shall as reasonably possible maintain a normal client-advocate relationship with the client."

DIMINISHED CAPACITY

Keep in Mind:

“The fact that a client suffers a disability does not diminish the [advocate’s] obligation to treat the client with attention and respect. Even if the person has a legal representative, the [advocate] should as far as possible accord the represented person the status of client, particularly in maintaining communication.”

Scenario 2

Victor is a 72-year-old Vet who served in the Vietnam War. He wants you to represent him in an appeal of a denial of a service-connected disability claim. At your first meeting, he brings his adult daughter Amy. Victor indicates Amy will help him because of his dementia and depression.

Practical Tips: Direct communication with your client & how to maintain dignity and respect with a client with diminished capacity

In Victor and Amy hypo, during meetings with both:

- **Eye contact and speak directly with Victor**
- **Make it clear that Victor is the client and in control of his case; Victor can change his mind and choose to stop having Amy help**
- **This also helps empower the client and reinforces that he is in control of his case, not you or his family**
- **Avoid speaking about Victor to Amy b/c it can make him feel like a child and Amy the parent**

SCENARIO 3

- **Vet filed an ITF 11 months ago**
- **She wants to file a claim for an increased evaluation, and you determine she may also be entitled to TDIU**
- **You think it would be better for Vet to first obtain an increased rating for the SC condition and then file TDIU claim**
- **While this might result a loss of some months of TDIU benefits, you this strategy gives the Vet a better chance to eventually obtain the most SC benefits**

WHAT SHOULD YOU DO?

- A. Promptly file the claim for increase w/o mentioning the TDIU issue**
- B. Promptly file the claim for increase and explicitly raise the TDIU claim**
- C. Discuss options with Vet and accept her decision –if she rejects your advice about waiting to file the TDIU claim, file the TDIU claim along with the claim for increase**
- D. Discuss options with Vet and then tell her that you will not file the TDIU claim, even if she wants to**

Answer is C

- **You should present all options to client and try to convince the Vet to follow the course of action you suggest, but if the Vet insists, file the TDIU claim**
- **It is the Vet's decision –not yours**
- **In this situation (where a strategy decision might result in the loss of several months of TDIU benefits), you are obligated to communicate with client before embarking on a course of action**

SCENARIO 3

VA Error in Veteran's Favor:

- **You represent a Vet in a claim who has filed a claims for an increased evaluation for her SC knee disability and NSC pension with A&A**
- **Prior to its promulgation, you review the rating decision and see that the RO has erroneously granted her SMC(I) based on the need for A&A, rather than NSC pension at the A&A rate**
- **She is definitely not entitled to SMC(I)**

WHAT SHOULD YOU DO?

- A. Say/do nothing**
- B. Bring the error to the attention of the VA without consulting Vet**
- C. Inform Vet about the error, request her permission to inform VA, but if she doesn't give it to you, you must inform the VA**
- D. Inform Vet about error, request her permission to inform VA, but if she doesn't give it to you, an overpayment may be created (which could be subject to a waiver claim b/c of administrative error)**
- E. Inform Vet about the error, request her permission to inform VA, but if she doesn't give it to you, you must withdraw your representation**

ANSWER IS E

- **You should not take action that would harm your client, but remaining her representative and knowingly allowing VA to pay benefits to which she is not entitled could be considered a violation of multiple provisions of §14.632:**
 - **(a)(2) –must be truthful in dealings with claimants and VA**
 - **(c)(3) –shall not engage in conduct involving fraud, deceit, misrepresentation, or dishonesty**
 - **(c)(9) –shall not engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA**

SCENARIO 4

Duty to Client

- **You represent a Vet receiving NSC pension**
- **Based on info you received from a member of your Post, you suspect, but have no direct proof, that the Vet has withheld info about income –namely, money he earns in a consulting business**
- **You now believe that the Vet should not be receiving NSC pension**

WHAT SHOULD YOU DO?

- A. Nothing**
- B. Notify VA about the Vet's consulting business**
- C. Advise Vet he must tell VA that he is earning income as a consultant, and if he does not report this income, you will be forced to tell VA**
- D. Advise Vet that if he is in receipt of income or if he is working, because he is in receipt of NSC pension, he is obligated to inform the VA**
- E. Advise Vet that if he is in receipt of income not reported to VA, VA may find out about the income and create an overpayment**

ANSWER IS D & E

- **If you suspect, but you are not certain, that a Vet you represent who is receiving NSC pension is receiving a salary from work, the most you should do is advise the Vet to report all income and changes in work status, and warn the Vet that an overpayment could be created.**
- **You are not obligated to investigate your client.**

SCENARIO 5

- **You represent Vet seeking SC for back condition**
- **Vet served from 2005 to 2009, with a tour in Afghanistan**
- **Vet has current back disability and alleges in-service back injury, but STRs show nothing related to back**
- **Back disability not treated or diagnosed until 6 years after discharge**
- **You do not know how or when Vet hurt back in service**
- **You know that if Vet suffered back injury during combat, it is much easier to establish the “in-service injury” element of SC**

WHAT SHOULD YOU DO?

- A. Ask Vet where and how he hurt his back
- B. Ask Vet if he hurt his back during combat with the enemy
- C. Before you ask him how and when he hurt his back in service, explain all the ways Vet might be able to prove that he injured his back in service
- D. Before you ask if he injured his back during combat, explain that it would be much easier to convince VA that he injured his back in service if he states the injury occurred during combat with enemy
- E. C then D

Answer is E

You should explain the rules and the impact of certain responses before the claimant commits to a factual response. An informed claimant is much better off.

SCENARIO 5

Frivolous Claims

- **Vet served on active duty from 1980 to 1985**
- **Vet comes to you wanting you to help her file a claim for NSC pension**
- **Since Vet did not serve during a period of war, you know her appeal has ZERO chance of success**

WHAT SHOULD YOU DO?

- A. Advise Vet of the law and that she is not eligible for NSC pension, but if she still wants to pursue the claim, you will help represent her.**
- B. Inform Vet that because her claim has no merit, you cannot represent her on that claim**
- C. Ask Vet if she has any current disabilities that she thinks may be related to service**
- D. B and C**

Answer is D

- **Inform Vet that you will not file a claim for pension because it has no merit**
- **But, it would be a good idea to ask if she has any disabilities that might be service-connected and consider filing a claim for comp**
- **This way you show that you want to help the Vet**

FRIVOLOUS CLAIMS

“A claim, issue, or argument is frivolous if the individual providing representation 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.”

- **38 C.F.R. §14.633(c)(4)**

- **VA can cancel accreditation or authority to provide representation on a particular claim if OGC finds by clear and convincing evidence that you knowingly presented a frivolous claim, issue, or argument**
- **In practice, a claim, issue, or argument has to be egregious to be considered frivolous**

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Q & A