



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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MAYBE I SHOULD USE A PAID AGENT AT THE VA?

VA regulations permit claimants to use three types of representatives in connection with benefit claims: (1) VA-accredited advocates affiliated with a recognized service organization like DAV; (2) licensed attorneys approved by VA; and (3) VA-authorized “claims agents.” This issue of the newsletter goes into some detail about the pros and cons of using this third class of representative.¹

What are agents?

Agents are generally non-lawyer practitioners who have passed an assessment administered by VA and “hung out a shingle” as a representative. Agents are sometimes, but not always, persons who have worked as advocates with a VSO but have decided to go solo and to accept payments from individual veterans.

Are agents cheaper than attorneys?

Although some agents may work for less than some attorneys, to the extent that VA regulations and related statutes place limits on fees, agents may charge as much as attorneys do. DAV has noticed an uptick in the number of agents who are suing their clients for unpaid fees.

Are agents as well-informed as DAV service officers?

In general, we think the answer to this question is “no,” although some agents – especially those few who may be associated with law firms specializing in veterans

issues – may keep up to date on the ever-changing world of veterans law. DAV NSOs have access to the most current information on claims-related issues. That is one of the reasons why DAV requires that even department and chapter service officers, many of whom receive instruction from DAV, process all claims through a *National Service Office*. National Service Offices (and NSOs) are sure to have the best information available to assist with a benefit issue.

What if an agent messes up my case?

Good question. The possibility of a mistake is always there, whether you use a DAV service officer, an attorney or an agent.

DAV has in place a strong quality control program that dramatically reduces the likelihood of a mistake in handling a claim. Compared to the benefit dollars that DAV gains for claimants, the amount of money involved in “mistake” cases is approximately 1/1000 of 1% (.00001) of that involved in “successful” cases. Moreover, DAV has various options to provide some recovery to the small handful of veterans who lose money because of a mistake by a DAV-affiliated representative. As far as we know, no other service organization takes this responsibility as seriously as we do.

Agents more typically operate as sole proprietorships or very small businesses. There is no legal requirement that agents carry malpractice insurance and we suspect that most do not. **Standard business insurance policies**

¹ It is possible for literally anyone to be recognized as a veteran’s representative at VA on a one-time basis. This option is occasionally used where a veteran wishes to be represented by a family member or clergyman who otherwise has no standing before VA. This option is beyond the scope of this issue of the newsletter.



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would not cover payments to clients whose cases were handled negligently.

Except in a few states, lawyers are not required to carry malpractice insurance, although most attorneys do have policies. Warning: It can be very difficult to deal with lawyer malpractice insurance carriers. You should assume that you will need to hire a lawyer to sue your lawyer!

Who keeps an eye on agents?

VA requires that agents receive a minimal amount of continuing education in VA law each year. Beyond that, absent an incident of serious misconduct, agents are subject to little supervision. Contrast this with, for example, National Service Officers who are regularly evaluated by DAV management and subject to constant on-site supervision and quality control. Lawyers are answerable to their state bars and, ultimately, to their states' highest courts.

DAV is also concerned about the proliferation of "agents" who have not been approved by VA. Although it is illegal for such persons to hold themselves out as legitimate representatives, we are told that VA has made a determination that it cannot police the universe of unregistered agents. That means that the only true mechanism for dealing with this problem is through prosecutions under state laws prohibiting the "unauthorized practice of law" (UPL). UPL cases are not that common, as they require the dedication of resources by prosecutors' offices, which are usually more interested in crimes involving violence.

Even worse, a UPL action is usually handled by the criminal courts, so even if an agent is convicted of the offense, that will not trigger any compensation to the veteran(s) victimized by the misconduct. The bottom line is, that *as a general rule*, DAV believes that veterans are better off with National Service Officers or (in some very unique cases) experienced veterans lawyers than they are with agents.

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