

§ 20.607 Rule 607. Revocation of a representative's authority to act.

Subject to the provisions of § 20.1304 of this part, an appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 5901-5904)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans' Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal—(1) Applicability.* The restrictions on a representative's right to withdraw contained in this

paragraph apply only to those cases in which the representative has previously agreed to act as representative in an appeal. In addition to express agreement, orally or in writing, such agreement shall be presumed if the representative makes an appearance in the case by acting on an appellant's behalf before the Board in any way after the appellant has designated the representative as such as provided in §§ 20.602 through 20.605 of this part. The preceding sentence notwithstanding, an appearance in an appeal solely to notify the Board that a designation of representation has not been accepted will not be presumed to constitute such consent.

(2) *Procedures.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans' Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impossible, impractical, or unethical. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions should not contain information which would violate privileged communications or which would otherwise be unethical to reveal. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof

of service of the motion. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response.

(Authority: 38 U.S.C. 5901-5904, 7105(a))

(Approved by the Office of Management and Budget under control number 2900-0085)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized pursuant to Rule 605 (§20.605 of this part) are not permitted to receive fees. An attorney-at-law or agent who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as representative in accordance with Rule 603(a) or Rule 604(a) (§20.603(a) or §20.604(a) of this part) in his or her individual capacity.

(c) *Circumstances under which fees may be charged.* (1) *General.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if both of the following conditions have been met:

(i) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved; and

(ii) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(2) *Clear and unmistakable error cases.* For the purposes of this section, in the case of a motion under subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable error), the "issue" referred to in this paragraph (c) shall have the same meaning as "issue" in Rule 1401(a) (§20.1401(a) of this part).

(d) *Exceptions—(1) Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) *Payment of fee by disinterested third party.* (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in