

§ 14.504

38 CFR Ch. I (7-1-07 Edition)

or (2) or paragraph (b) of this section, the Regional Counsel will prepare a tentative opinion (including identification of the benefit sought) and forward it to the General Counsel for review. When it is returned, the Regional Counsel will conform the opinion (if necessary) to the views of the General Counsel, and release it to the requesting official. The Regional Counsel may release any modified opinion as the opinion of the General Counsel.

(b) The Regional Counsel may submit to the General Counsel any legal question, opinion, or question pertinent to legal functions, upon which the views or advice of the General Counsel are desired. This request should set forth the special circumstances, contain a statement of the legal implications involved (including any Department of Veterans Affairs benefits claimed), set forth the facts out of which they arise, and cite any statutes or court decisions readily available, regulations, related opinions of the General Counsel and other matters deemed pertinent, with appropriate discussion. If any administration will be affected, a copy of the reply will be forwarded to that administration head.

[42 FR 41411, Aug. 17, 1977, as amended at 54 FR 34982, Aug. 23, 1989]

§ 14.504 Domestic relations questions, authority and exceptions.

(a) Regional Counsels have the same authority with respect to domestic relations questions as they do with respect to matters covered by § 14.503 except as specifically excluded by the provisions of paragraph (a) of that section.

(b) In the following instances the Regional Counsel, regardless of whether State law is wholly controlling or a Department of Veterans Affairs precedent is available, will prepare a tentative opinion, researched as completely as possible with reasonably available facilities, and forward two copies thereof directly to the General Counsel for review and disposition (as provided in § 14.503 respecting other than domestic relations matters):

(1) Where it is not clear under applicable State law: (i) Whether the marriage of a veteran's child or the remarriage of a veteran's widow was void

without decree of annulment, or (ii) whether an annulment decree was rendered by a court with basic authority to render annulment decrees;

(2) When fraud or collusion by either party appears to have influenced the granting of an annulment decree;

(3) Cases in which there are contesting claims;

(4) Unusual situations, such as those involving proxy marriages, the law of two or more jurisdictions or of a foreign country;

(5) Cases involving difference of opinion between Regional Counsels or between a Regional Counsel and the official who submitted the question involved.

[42 FR 41411, Aug. 17, 1977]

§ 14.505 Submissions.

All submissions will set forth the question of law on which the opinion is desired, together with a complete and accurate summary of relevant facts. Files, correspondence, and other original papers will not be submitted unless pertinent portions thereof cannot practically be summarized or copies made and attached as exhibits.

[42 FR 41411, Aug. 17, 1977]

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Department of Veterans Affairs shall be conclusive as to all Department officials and employees with respect to the matter at issue, unless there has been a material change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as precedent opinions pursuant to paragraph (b) of this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(2). Advice, recommendations, or conclusions on matters of Government or Department policy, contained within a written legal opinion, shall not be