

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900-AL45

Board of Veterans' Appeals: Rules of Practice—Notice Procedures Relating to Withdrawal of Services by a Representative

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' (VA) Board of Veterans' Appeals Rules of Practice to simplify notice procedures relating to withdrawal of services by a representative after certification of an appeal. We believe that these simplified notice procedures would be adequate for establishing proof of service.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL45." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials by agencies of original jurisdiction (AOJs) of claims for veterans' benefits. This document proposes to amend the Board's Rules of Practice for the purpose of simplifying notice procedures in connection with motions to withdraw services by a representative after certification of an appeal.

Rule 608(b)(2) (38 CFR 20.608(b)(2)) contains various requirements relating to withdrawal of services by a representative after certification of an appeal. The only requirements we propose amending concern the notice procedures. Currently, a representative must send the appellant a copy of the

representative's motion to withdraw services by mailing the motion, return receipt requested; after the representative receives the signed receipt showing that the motion was received, the representative must file the signed receipt with the Board. If the appellant files a response, the appellant is required to send the representative a copy of the response by mailing it, return receipt requested, and is required to file the signed receipt with the Board.

We do not believe that the current level of proof of notice is appropriate. First-class mail is used for other important documents affecting the appellants and representatives involved in these appeals, including the AOJ decisions that are the subject of the appeals and the Board's decisions. We are proposing a change to require merely use of first-class mail, postage prepaid, with a certificate of service. This proposed change would be in line with general rules of proof of service in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(d) (generally, a certificate of service by a party (or attorney) is sufficient proof of service). We believe these simplified procedures would provide adequate assurance of receipt, when considered in light of the benefits of simplification of the notice procedures. These proposed procedures would remove the extra steps of the current return receipt requirements and would more easily enable the appellant to file a response, either opposing or supporting the representative's motion. Also, these proposed procedures would shorten the time before the motion is ripe for determination by the Board, expediting the possibility of a transition, if appropriate, to a new representative.

Accordingly, we propose amending the rule in cases involving a motion to withdraw services by a representative after certification of an appeal, to provide that proof of service will be accomplished by filing a statement with the Board certifying that the motion has been sent by first-class mail, postage prepaid, to the appellant or that the response has been sent by first-class mail, postage prepaid, to the representative, as applicable.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This rule would merely concern requirements for proof of service of motions for withdrawal of services by a representative after certification of an appeal before the Board, and for proof of service of responses to such motions. Moreover, such motions and responses are events that occur in only a minor proportion of the cases before the Board. Any economic impact on small entities would be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Attorneys, Lawyers, Legal services, Procedural rules, Veterans.

Approved: May 27, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§ 20.608 [Amended]

2. Section 20.608, paragraph (b)(2) is amended by:

A. In the third sentence, removing "permitted." and adding, in its place, "permitted, and a signed statement certifying that a copy of the motion was sent by first-class mail, postage prepaid, to the appellant, setting forth the address to which the copy was mailed."

B. Removing the sixth and seventh sentences.

C. In the eighth sentence, removing "motion." and adding, in its place, "motion and must include a signed