

Bergmann & Moore, LLC

Joseph R. Moore, Esq.
Partner

Glenn R. Bergmann, Esq.
Partner

January 25, 2011

Gregory O. Block
Clerk of the Court
United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW
Washington, DC 20004

Re: *Parrish v. Shinseki*, No. 09-0757
Citation of Supplemental Authority

Dear Mr. Block:

Pursuant to Rule 30(b), Appellant hereby advises the Court of additional pertinent and significant authority discovered after his briefs were filed.

The additional authorities are the 1999 and 2009 versions of VA Directive 0000, both entitled "Delegations of Authority[,] of which counsel became aware yesterday and January 21, respectively. They are pertinent to Appellant's argument at pages 7 through 8 of his principal brief, and pages 4 through 6 of his reply brief.

Sincerely yours,

/s/ Glenn R. Bergmann
Glenn R. Bergmann

/s/ Daniel D. Wedemeyer
Daniel D. Wedemeyer

Counsel for the Appellant

Attachments

Department of Veterans Affairs
Washington DC 20420

VA Directive 0000
Transmittal Sheet
November 22, 1999

DELEGATIONS OF AUTHORITY

1. REASON FOR ISSUE: VA Directive 0000, Delegations of Authority, is being reissued due to extensive changes in the delegations of authority process.

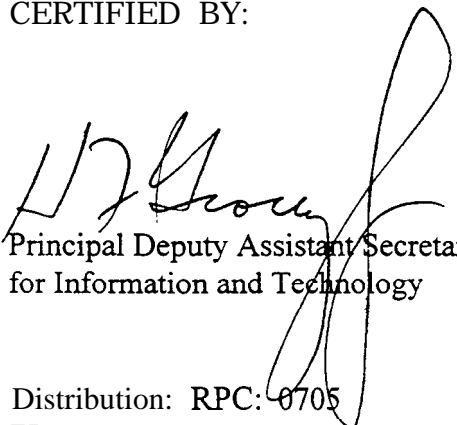
2. SUMMARY OF CONTENTS/MAJOR CHANGES:

- a. The policy of VA shall be to delegate decision-making authority to the maximum extent that is both feasible and beneficial while ensuring proper accountability for all actions.
- b. This directive updates titles of Department officials and organizational responsibilities for managing delegations of authority.
- c. A new requirement is established to include a two-year sunset time limit for all delegations of authority memoranda unless waived by the Secretary.
- d. A new format is established for submission of the Delegation of Authority Memorandum.

3. RESPONSIBLE OFFICE: Office of the Assistant Secretary for Information and Technology, Information Management Service (045A4).

4. RESCISSION: VA Directive 0000, Delegations of Authority, dated August 28, 1996.

CERTIFIED BY:



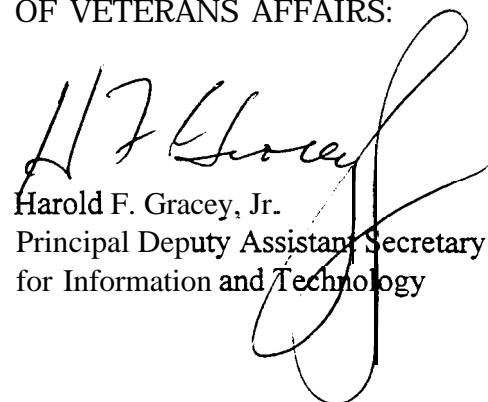
Principal Deputy Assistant Secretary
for Information and Technology

Distribution: RPC: 0705
FD

FOR SCREEN READER

Signed by: Harold F. Gracey, Jr.
Principal Deputy Assistant Secretary
for Information and Technology

BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:



Harold F. Gracey, Jr.
Principal Deputy Assistant Secretary
for Information and Technology

November 22, 1999

VA Directive 0000

DELEGATIONS OF AUTHORITY

1. PURPOSE

This directive sets forth policies for issuing delegations of authority from the Secretary of Veterans Affairs. Title 38 United States Code 5 12, "Delegation of authority: assignment of functions and duties," allows the Secretary to delegate virtually all authority for providing veterans benefits and services contained in Title 38. In addition, Title 38 Code of Federal Regulations, Part 2, "Delegations of Authority," identifies those delegations specific to VA organizations and positions and has the effect of law. This directive applies to all organizational elements in the Department.

2. POLICY

The authority to make decisions and take certain actions comes from a variety of sources: delegations established by Federal law; delegations issued by the Secretary of Veterans Affairs; Department of Veterans Affairs (VA) regulations and policy directives; approved functional statements; position descriptions; and verbal instructions.

a. VA officials will delegate decision-making authority to the maximum and legal extent that is both feasible and beneficial while ensuring proper accountability for all actions.

b. VA **officials** will normally delegate and redelegate authority to titles of positions rather than to named employees. Authority delegated to a position by title may be exercised by a person officially designated to serve in that position in an acting capacity, or on a temporary basis, unless prohibited by the terms of the delegation.

c. Authority delegated or redelegated to a named individual may not be exercised by another person.

d. All delegations of authority memoranda must include a sunset date establishing a two-year time limit unless a waiver is approved by the Secretary.

3. RESPONSIBILITIES

a. The Secretary of Veterans Affairs will determine which of his or her authorities may be delegated and will take action to assign them to Administration Heads, Assistant Secretaries, Other Key Officials, and Field Facility Directors, as appropriate. The Secretary will direct changes to delegations of authority as appropriate.

b. The VA Chief Information Officer (CIO) is designated as the Department's Principal Delegation Officer and will:

(1) Recommend to the Secretary Departmentwide policies, procedures and guidance governing the delegations of authority program.

(2) Provide information to the Secretary on procedural issues relating to existing or proposed delegations of authority, when requested.

(3) Publish an annual list of individuals in Central Office designated to serve as Delegation Control Officers (DCO).

(4) Maintain an inventory of all delegations approved by the Secretary.

c. Administration Heads, Assistant Secretaries, and Other Key Officials. These individuals will:

(1) Determine which authorities delegated from the Secretary may be redelegated.

(2) Delegate decision-making authority to the maximum extent feasible and beneficial.

(3) Establish plans and procedures to govern delegations of authority within their organizations.

(4) Designate an individual in Central Office who serves as the DCO for their organizational element. The individual designated will be responsible for administering the delegations of authority program under the jurisdiction of their organizational element.

(5) Notify the VA CIO of the name, telephone number, and mail routing symbol of the DCO.

(6) Review for accuracy their listing of current delegations of authority from the Secretary on an annual basis and report any changes to the Director, Information Management Service.

d. The General Counsel. In addition to duties outlined in subparagraph c, the General Counsel will review all new or revised delegations of authority from the Secretary to Administration Heads, Assistant Secretaries, and Other Key Officials for all legal aspects and conformity with VA statutes and regulations.

e. Regional Counsels will serve as the consultant to Field Facility Directors when a delegation of authority involves legal issues.

4. REFERENCE

a. Title 38 United States Code 5 12

b. Title 38 Code of Federal Regulations, Part 2

November 22, 1999

VA Directive 0000
Appendix A**PROCEDURES FOR ESTABLISHING DELEGATIONS OF AUTHORITY****1. GENERAL**

a. A delegation of authority is the formal transfer of an authority to take certain actions or to make certain decisions, which have legal or administrative significance. Delegations of authority are to perform functions such as:

- (1) Regulating nongovernmental activities.
- (2) Entering into a contract or making a grant involving the obligation of Federal funds.
- (3) Procuring supplies and services.
- (4) Certifying documents.

b. A delegation of authority occurs when a decision is made to delegate an authority from the **primary** level in which it is vested to a secondary level. Delegations of authority may be originated by the delegating official or recommended by the official who needs the delegation to accomplish his or her responsibilities. Delegations may also occur because of changes to public laws or regulations, or as a result of a reorganization of functional responsibilities.

c. The following criteria are used to decide if an authority or responsibility should be delegated:

- (1) Is the delegation legal and ethical?
- (2) Will the delegation enhance or create prompt and effective program administration or management?
- (3) Will the delegation ensure an appropriate level of oversight and control?
- (4) Will the delegation eliminate a procedural step, shorten lines of communication, improve services, or otherwise save time or cost of operations?
- (5) Is the position to which the authority is to be delegated appropriate in terms of grade level and assigned responsibilities?
- (6) Is the delegation consistent with VA's mission?
- (7) Will the delegation improve service to veterans and their dependents?

d. All delegations of authority memoranda must include a sunset date establishing a two-year time limit for the delegation.

e. The Secretary must waive any delegations of authority memoranda that do not reflect the two-year time limit.

Appendix A**2. METHODS FOR DELEGATING AUTHORITY**

Delegations of authority may be established in the Code of Federal Regulations (CFR) or by a delegation memorandum. The delegations contained in the CFR are specific to VA organizations and positions and have the effect of law. The CFR should be amended when delegations occur because of new or changes to public laws or Federal regulations, or as a result of a reorganization of VA functional responsibilities. Delegation memoranda will be used to delegate internal management functions which are not defined by statute or Federal regulation.

a. **Title 38 CFR, Part 2, Delegations of Authority.** A delegation of authority established in Title 38 CFR, Part 2, does not require a delegation memorandum. When a proposal is drafted to amend Title 38 CFR, Part 2, the originating office will obtain internal concurrence, if necessary, and forward the package to the Office of the General Counsel.

b. Delegation Memorandum

(1) When a delegation of authority is established using a memorandum, it will be completed in the format shown in the Appendix A, Attachment, Delegation of Authority Memorandum Sample, of this directive. (Note: Paragraph 5, "Effective Date:" of the sample must be changed in accordance with the delegation memoranda that do not meet the two-year time limit.)

(2) The delegation memorandum will be circulated for concurrence, including VA Chief Information Officer, using VA Form 4265, Concurrence and Summary Sheet. **(Note:** *Concurrence of the General Counsel is not required during this phase.*)

(3) When all necessary concurrences have been obtained, the completed package, including a copy of each VA Form 4265, will be forwarded to the General Counsel for concurrence. **(Note:** *The General Counsel will be the last concurrence prior to submission to the Secretary for signature.*)

(4) Immediately upon concurrence by the General Counsel, the package will be forwarded for the signature of the Secretary.

(5) After signature, the delegation of authority will become effective and the package will be returned to the originating office for distribution, if appropriate, and for incorporation into the delegations of authority inventory official file.

3. INVENTORY OF EXISTING DELEGATIONS

An inventory of existing delegations of authority from the Secretary to the Deputy Secretary, Administration Heads, Assistant Secretaries, Other Key Officials, and Field Facility Directors will be reviewed by each organization's Delegation Control Officer (DCO). The inventory should consist of the following data elements:

November 22, 1999

**VA Directive 0000
Appendix A**

- a. Delegatee(s);
- b. Scope;
- c. Effective Date;
- d. Authority;
- e. Function(s);
- f. Redesignate;
- g. Restriction(s); and
- h. Expiration Date.

4. ANNUAL REVIEW OF DELEGATIONS OF AUTHORITY

- a. The delegations of authority inventory will be reviewed annually in January by the Director, Information Management Service in concert with the DCO for each Administration Head, Assistant Secretary, and Other Key Official.
- b. The Director, Information Management Service will report the results of the annual review to the VA CIO.

November 22, 1999

VA Directive 0000
Appendix A
Attachment

DELEGATION OF AUTHORITY MEMORANDUM SAMPLE



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

MEMORANDUM FOR THE UNDER SECRETARY FOR HEALTH

SUBJECT: Delegation of Authority for Disbursement Agreements

1. DELEGATION. This memorandum delegates to the Under Secretary for Health the authority to approve the execution of disbursement agreements.
2. AUTHORITY. Title 38, U.S.C., Section 7406(c).
3. RESTRICTIONS. None. This delegation cancels and supersedes all previous delegations of authority.
4. REDELEGATION. The Under Secretary for Health may further redelegate this authority to the Chief Affiliation Officer.
5. EFFECTIVE DATE. This delegation of authority is effective upon signature and will expire two years after the date delegate.

Togo D. West, Jr.

NOTE:

Paragraph 1. State the specific authority delegated. This statement should be absolutely clear and not subject to multiple interpretations.

Paragraph 2. Cite the specific legal or other source of the authority. If Federal laws are cited, identify by reference the specific title, section, and paragraph. Otherwise, refer to the appropriate VA directive or regulation, citing the identifying number, subject, and date, which vest authority in the delegator.

Paragraph 3. Identify any restriction to exercise the authority. Include the statement: "This delegation cancels and supersedes all previous delegations of authority."

Paragraph 4. State whether the authority can be redelegated to a position below that of the delegatee. Include a statement of limitations; if any, as to which positions the authority can be redelegated.

A-AI

Department of Veterans Affairs
Washington, DC 20420

VA Directive 0000
Transmittal Sheet
September 9, 2009

DELEGATIONS OF AUTHORITY

1. REASON FOR ISSUE: VA Directive 0000, Delegations of Authority, is being reissued in order to comply with time limits prescribed in VA Directive 6330, Directives Management.

2. SUMMARY OF CONTENTS/MAJOR CHANGES:

a. The policy of VA shall be to delegate decision-making authority to the maximum extent that is both feasible and beneficial while ensuring proper accountability for all actions.

b. This directive updates titles of Department officials and organization responsibilities for managing delegations of authority.

3. RESPONSIBLE OFFICE (S): Office of the Assistant Secretary for Information and Technology (005), Office of Information Protection and Risk Management (005R), Office of Privacy and Records Management Service (005R1), Enterprise Records Service (005R1B), is responsible for the material contained in this directive.

4. RELATED HANDBOOK: None

5. RESCISSION: VA Directive 0000, Delegations of Authority, dated November 22, 1999.

CERTIFIED BY:

**BY DIRECTION OF THE
SECRETARY OF VETERANS AFFAIRS**

/s/
Stephen W. Warren
Acting Assistant Secretary for
Information and Technology

/s/
Stephen W. Warren
Acting Assistant Secretary for
Information and Technology

Electronic Distribution Only:

September 9, 2009

VA Directive 0000

DELEGATIONS OF AUTHORITY

1. PURPOSE AND SCOPE

a. This directive sets forth policies for issuing delegations of authority from the Secretary of Veterans Affairs. Title 38 United States Code 512, "Delegation of Authority: assignment of functions and duties," allows the Secretary to delegate virtually all authority for providing veterans benefits and services contained in Title 38. In addition, Title 38 Code of Federal Regulations, Part 2, "Delegations of Authority," identifies those delegations specific to VA organizations and positions and has the effect of law. This directive applies to all organizational elements in the Department.

b. The essential aspect of protecting sensitive information is the awareness and individual responsibility of our employees.

2. POLICY

a. The authority to make decisions and take certain actions comes from a variety of sources: delegations established by Federal law; delegations issued by the Secretary of Veterans Affairs; Department of Veterans Affairs (VA) regulations and policy directives; approved functional statements; position descriptions; and verbal instructions.

b. VA officials will delegate decision-making authority to the maximum and legal extent that is both feasible and beneficial while ensuring proper accountability for all actions.

c. VA officials will normally delegate and redelegate authority to titles of positions rather than to named employees. Authority delegated to a position by title may be exercised by a person officially designated to serve in that position in an acting capacity, or on a temporary basis, unless prohibited by the terms of the delegation.

d. Authority delegated or redelegated to a named individual may not be exercised by another person.

e. All delegations of authority memoranda must include a sunset date establishing a two-year time limit unless a waiver is approved by the Secretary.

VA Directive 0000

September 9, 2009

3. RESPONSIBILITIES.

a. The Secretary of Veterans Affairs will determine which of his or her authorities may be delegated and will take action to assign them to Under Secretaries, Assistant Secretaries, Other Key Officials, and Field Facility Directors, as appropriate. The Secretary will direct changes to delegations of authority as appropriate.

b. The VA Chief Information Officer (CIO) is designated as the Department's Principal Delegation Officer and will:

(1) Recommend to the Secretary, Department wide policies, procedures and guidance governing the delegations of authority program.

(2) Provide information to the Secretary on procedural issues relating to existing or proposed delegations of authority, when requested.

(3) Publish an annual list of individuals in Central Office designated to serve as Delegation Control Officers (DCO).

(4) Maintain an inventory of all delegations approved by the Secretary.

c. **Under Secretaries, Assistant Secretaries, and Other Key Officials.** These individuals will:

(1) Delegate decision-making authority to the maximum extent feasible and beneficial.

(2) Establish plans and procedures to govern delegations of authority within their organizations.

(3) Designate an individual in Central Office to serve as the DCO for their organization element. The individual designated will be responsible for administering the delegations of authority program under the jurisdiction of their organizational element.

September 9, 2009

VA Directive 0000

(5) Notify the VA CIO of the name, telephone number, and mail routing symbol of the DCO.

(6) Review for accuracy their listing of current delegations of authority from the Secretary on an annual basis and report any changes to the Director, Enterprise Records Service (005R1B).

d. **The General Counsel.** In addition to duties outlined in subparagraph c, the General Counsel will review all new or revised delegations of authority from the Secretary to Under Secretaries, Assistant Secretaries, and Other Key Officials for all legal aspects and conformity with VA statutes and regulations.

e. **Regional Counsels** will serve as the consultant to Field Facility Directors when a delegation of authority involves legal issues.

4. REFERENCES

a. Title 38 United States Code 512

b. Title 38 Code of Federal Regulations, Part 2

September 9, 2009

VA Directive 0000
Appendix A

PROCEDURES FOR ESTABLISHING DELEGATIONS OF AUTHORITY

1. GENERAL

a. A delegation of authority is the formal transfer of an authority to make certain actions or to make certain decisions, which have legal or administrative significance. Delegations of authority are to perform functions such as:

- (1) Regulating nongovernmental activities.
- (2) Entering into a contract or making a grant involving the obligation of Federal funds.
- (3) Procuring supplies and services.
- (4) Certifying documents

b. A delegation of authority occurs when a decision is made to delegate an authority from the primary level in which it is vested to a secondary level. Delegations of authority may be originated by the delegating official or recommended by the official who needs the delegation to accomplish his or her responsibilities. Delegations may also occur because changes to public laws or regulations, or as a result of a reorganization of functional responsibilities.

c. The following criteria is used to decide if any authority or responsibility should be delegated:

- (1) Is the delegation legal and ethical?
- (2) Will the delegation enhance or create prompt and effective program administration or management?
- (3) Will the delegation ensure an appropriate level of oversight and control?
- (4) Will the delegation eliminate a procedural step, shorten lines of communication, improve services, or otherwise save time or cost of operations?
- (5) Is the position to which the authority is to be delegated appropriate in terms of grade level and assigned responsibilities?
- (6) Is the delegation consistent with VA's mission?

**VA Directive 0000
Appendix A**

September 9, 2009

(7) Will the delegation improve service to veterans and their dependents?

d. All delegations of authority memoranda must include a sunset date establishing a two-year time limit for the delegation.

e. The Secretary must waive any delegations of authority memoranda that do not reflect the two year time limit.

2. METHODS FOR DELEGATING AUTHORITY

Delegations of authority may be established in the Code of Federal Regulation (CFR) or by a delegation memorandum. The delegations contained in the CFR are specific to VA organizations and positions and have the effect of law. The CFR should be amended when delegations occur because of new or changes to public laws or Federal regulations, or as a result of a reorganization of VA functional responsibilities. Delegation memoranda will be used to delegate internal management functions which are not defined by statute or Federal regulation.

a. **Title 38 CFR, Part 2, Delegations of Authority.** A delegation of authority established in Title 38 CFR, Part 2, does not require a delegation memorandum. When a proposal is drafted to amend Title 38 CFR, Part 2, the originating office will obtain internal concurrence, if necessary, and forward the package to the Office of the General Counsel.

b. Delegation Memorandum

(1) When a delegation of authority is established using a memorandum, it will be completed in the format shown in the Appendix A, Attachment, Delegation of Authority Memorandum Sample, of this directive.

(2) The delegation memorandum will be circulated via WebCims for concurrence, including the VA Chief Information Officer, using VA Form 4265, Concurrence and Summary Sheet. (**Note:** Concurrence of the General Counsel is not required during this phase.)

(3) When all necessary concurrences have been obtained, the folder, including a copy of each VA Form 4265, will be forwarded to the General Counsel for concurrence. (**Note:** The General Counsel will be the last concurrence prior to submission to the Secretary for signature.)

September 9, 2009

**VA Directive 0000
Appendix A**

(4) Immediately upon concurrence by the General Counsel, the hard copy will be forwarded to the office of the Secretary for signature.

(5) After signature, the delegation of authority will become effective and the package will be returned to the originating office for distribution, if appropriate, and for incorporation into the delegations of authority inventory official file.

3. INVENTORY OF EXISTING DELEGATIONS

An inventory of existing delegations of authority from the Secretary to the Deputy Secretary, Under Secretaries, Assistant Secretaries, Other Key Officials, and Field Facility Directors will be reviewed by each organization's Delegation Control Officers. The inventory should consist of the following elements:

- a. Delegatee(s);
- b. Scope;
- c. Effective Date;
- d. Authority;
- e. Function(s);
- f. Redesignate;
- g. Restriction(s); and
- h. Expiration Date.

4. ANNUAL REVIEW OF DELEGATIONS OF AUTHORITY

The delegations of authority inventory will be reviewed annually in January by the Director, Records Management Service in concert with the DCO for each Under Secretary, Assistant Secretary, and Other Key Officials.

**VA Directive 0000
Appendix A
Attachment**

DELEGATION OF AUTHORITY MEMORANDUM SAMPLE



**THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON**

MEMORANDUM FOR THE UNDER SECRETARY FOR HEALTH

SUBJECT: Delegation of Authority for Disbursement Agreements

1. **DELEGATION.** This memorandum delegates to the Under Secretary for Health the authority to approve the execution of disbursement agreements.
2. **AUTHORITY.** Title 38, U.S.C., Section 7406(c).
3. **RESTRICTIONS.** None. This delegation cancels and supersedes all previous delegations of authority that may conflict with this delegation.
4. **REDELEGATION.** The Under Secretary for Health may further redelegate this authority to the Chief Affiliation Officer.
5. **EFFECTIVE DATE.** This delegation of authority is effective upon signature and will expire two years after the date delegated.

Eric K. Shinseki

NOTE

Paragraph 1. State the specific authority delegated. This statement should be absolutely clear and not subject to multiple interpretations:

Paragraph 2. Cite the specific legal or other sources of the authority. If Federal laws are cited, identify by reference the specific title, section, and paragraph. Otherwise, refer to the appropriate VA directive or regulation, citing the identifying number, subject, and date, which vest authority in the delegator.

Paragraph 3. Identify any restriction to exercise the authority. Include the statement: "This delegation cancels and supersedes all previous delegations of authority that may conflict with this delegation."

Paragraph 4. State whether the authority can be redelegated to a position below that of the delegatee. Include a statement of limitations; if any, as to which positions the authority can be redelegated.