

**IN THE UNITED STATES
COURT OF APPEALS FOR VETERANS CLAIMS**

VETERANS LEGAL ADVOCACY GROUP,)	
Petitioner,)	
)	
v.)	Docket No. 20-8291
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
Respondent.)	

***AMENDED* Petitioner’s Reply to the Secretary’s Response
to the Court’s April 9, 2021 Order**

We tried for many years to get the VA to fix its mail problem without involving the Court, but the VA never fixed it. The VA has repeatedly sent correspondence—including private medical records—to wrong addresses. The VA has a mail crisis. It has cost our non-profit firm thousands of hours that we should have spent representing veterans at a pro bono or low bono rate.¹

We asked the Court to order the VA to fix its problem with a threat of sanctions if it does not. The Secretary argued there is no longer a case or controversy because the VA fixed the problem. But we responded, proving the VA did not fix the problem by submitting mis-mailings after the Secretary

¹ Exhibit 2.

said there was none.² Then the Court asked the VA to answer several questions about how it deals with mail address problems. But the Secretary answered incorrectly and continued to state this is not the VA's problem to fix.

Rather than tell the Court it will do better—or at least try to do better—it made excuses and blamed us for its mistakes. The VA's arguments have changed throughout this petition. But they still don't add up.

The Secretary blames us for the VA's mistakes because we did not file a new 21-22a for each of our clients. That is not how to change an address. Then he says that we could tell an attorney fee coordinator and she would update all of the VA data systems. That doesn't work either. And that is what this petition comes down to: No matter what we do, the VA will not stop mailing our clients' documents to Alaska and Indiana unless this Court orders it to with a threat of sanctions if the VA violates its order.

I. The Secretary's idea that a new 21-22a needs to be filed for every client to update an address is false, contradictory to his previous advice, impractical, and proven ineffective.

The Secretary claims that an attorney must change her address by submitting a new 21-22a for each client. His answers throughout his response

² Exhibit 3.

all presume this false premise.³ But his claim is newly-invented and without any forethought of how it affects veterans. And it ignores what has already happened to our clients.

A. The Secretary’s 21-22a idea is not rooted in any law, regulation, rule, internal procedure, VA publication—or even the Secretary’s publicly suggested advice.

The Secretary says to change an attorney’s address, “the proper procedure is for the attorney to submit an updated VA Form 21-22a.” He repeatedly stated a 21-22a is how an attorney is supposed to change their address. But he never cited a law, regulation, rule, or even instruction from the VA that instructs an attorney to update her address by filing a new 21-22a.

And he won’t find it because it does not exist. The Secretary has publicly given very different advice on how to get the VA to correctly mail documents to an attorney.

B. The Secretary has provided solutions other than filing a new 21-22a, but the VA has not executed his suggestions.

The VA’s mailing problem has harmed many attorneys and their veteran clients. The National Organization for Veterans Advocates—NOVA—has

³ *E.g.*: “This requirement is not explicit, but it is inherent in the practice of submitting a new VA Form 21-22a to update an address . . .”

been dealing with this issue since 2015. In a recent VA mis-mailing case, the Appellant submitted an affidavit quoting NOVA leadership:

Since September 2015, I have been in regular communication with numerous representatives accredited to represent claimants before VA. My communication with said representatives has revealed that VA is not regularly mailing copies of decisional documents to claimants' representatives in accordance with 38 U.S.C. § 5104.⁴

An active NOVA member that monitors the discussion Board's for solutions to VA mailing problems said:

Wrong addresses on mailings have been discussed on the NOVA forums once a month for the last five years and never ONCE has [NOVA leadership's] inquiry response from VA been to submit new 21-22a's. There is a single OGC contact that we are advised to reach out to to ensure that all VA systems read appropriately.⁵

His statement lines up with NOVA's attempts to get the VA to fix this problem for its members:

VBA and/or OGC folks came to two conferences to help people with address issues - that they need to first update with the OGC accreditation mailbox and then the "corporate" database is supposed to be updated.⁶

The VA suggested to NOVA conference attendants that they file a form that is similar to the letter we sent in for every one of our clients to update the

⁴ App. Br. at page 7 in *Romero v. Tran* 33 Vet. App. 252 (2021).

⁵ Email from Matt Wilcut to Harold Hoffman on May 17, 2021.

⁶ Email from NOVA leadership to Harold Hoffman on June 8, 2021.

VA on our new address.⁷ And we did more than what the Secretary advised: we 1) diligently notified the VA of our address change for each individual client⁸ and 2) sent letters to the VA's OGC.⁹ But the VA still could not get it right.

C. The Secretary's suggestion is to force veterans and their attorneys to form a new relationship, often to the veteran's detriment.

The Secretary's answer also ignores practicality. An attorney cannot simply file a new 21-22a with a new address. She would also have to get each client to sign the new 21-22a and then counter-sign it. It would take several months and hundreds of hours of labor to get all new VA 21-22a forms signed. Worse, many clients would not return them for various reasons—some due to suspiciousness from service-connected mental health disabilities¹⁰—so would be harmed. In addition, this would leave attorneys in an impossible place: the attorney would remain POA because the attorney-client relationship continues but—without the updated 21-22a—would be unable to receive her client's VA decisions and paperwork.

⁷ Compare Exhibit 4 with Exhibit 5.

⁸ Exhibit 6

⁹ Exhibit 5.

¹⁰ Exhibit 7 (this veteran fired me because the VA mailed documents to our old address).

D. The VA still sends many documents to the wrong address despite the correct address being listed on the most recent 21-22a.

The Secretary's answer also ignores that his newly-minted solution does not work. His answer is to file a new 21-22a for each client, but the VA continues to send documents to Alaska and Indiana for clients for whom we have sent in a 21-22a with our current address. The following are *some* of what our paralegal found in an hour—including one mis-mailed during this petition:¹¹

Client	21-22a Date	21-22a Address	VA Document Date	VA Document Address
DB	9/7/2018	Virginia	6/16/2020	Indiana
TC	10/31/2018	Virginia	10/9/2019	Indiana
TC2	1/15/2019	Virginia	5/21/2020	Alaska
RF	10/31/20218	Virginia	1/21/2020	Indiana
RG	9/17/2018	Virginia	1/13/2020	Indiana
CH	8/14/2018	Virginia	4/10/2020	Alaska
GH	9/10/2018	Virginia	12/31/2019	Indiana
LJ	11/28/2018	Virginia	12/17/2019	Indiana
JM	9/11/2018	Virginia	2/20/2020	Indiana
LM	9/7/2018	Virginia	9/27/2019	Indiana
JP	6/18/2019	Virginia	3/30/2020	Alaska
RR	9/10/2018	Virginia	1/7/2020	Alaska
MS	9/7/2018	Virginia	4/21/2021	Indiana
DT	9/5/2018	Virginia	12/30/2019	Indiana
JW	9/11/2018	Virginia	12/7/2020	Indiana
LW	10/6/2018	Virginia	3/18/2019	Indiana
DW	9/10/2018	Virginia	5/26/2020	Alaska

¹¹ Exhibit 1. Paginated with a table of contents so the Court can compare addresses.

The Secretary persists that we need to file a 21-22a with the changed address for each client. But that does not work. We filed a letter with their VA file # on it and sent it to the evidence intake center for each client—as the Secretary instructed NOVA members. But it did not matter. And that is why we were forced to file this petition—we have done everything the VA asks to update our address and the VA continues to send our clients’ documents to the wrong address.

II. Changing the address in one VA data system does not change the address in other VA data systems.

Despite claiming that “an updated VA Form 21-22a is required” to change an attorney’s address, the Secretary suggested another way to change an address is through the attorney fee coordinators, who could then update all the VA data systems by changing the address in one data system. His suggestion ignores the VA’s inner workings.

First, the Secretary’s argument conflicts with the several times he excused the VA from updating addresses across systems because sharing data across platforms is too technically advanced for the VA. It is nearly impossible to believe that technology does not exist for the VA to share info across systems. Likely, the VA has chosen not to deploy the available technology.

We talk to attorney fee coordinators frequently. Often they are confused by our clients who have signed a fee agreement for no fee. Many times, they are unsure what our address is because different ones are in different systems. I always ask them to change it in every system, but they never can. One recently told me he was creating a spreadsheet of updated attorney info as he spoke with attorneys so he could circulate it amongst his colleagues in other regional offices.

Our paralegal had the following conversation proving that attorney fee coordinators are looking at our address in multiple systems:¹²

AFC: The attorney fee letter that was mailed to Mr. [Evan] Snipes on June 18, 2020 was returned to the VA on June 29, 2020; because at that time the OGC address listed his address as Anchorage AK. This letter was mailed out again on July 13, 2020 to the address on the OGC site shown as Arlington VA.

Us: Thank you for the update! Is there a way to permanently update Mr. Snipes's address with the VA? I have spent hours and hours faxing in letters to update our address—125 letters at last count—since the beginning of the year, and yet this still happens. We haven't used the address in Alaska in more than five years (there was an intervening Indiana address), and we've had our Virginia address for 2.5 years.

AFC: We are required to verify the attorney's address on the OGC site each time we mail correspondence, so please make sure your address is correct on the OGC site.

Us: It is correct there, but this still keeps happening. Thank you.

¹² Exhibit 8.

Evan's address was not listed as Alaska at that time.¹³ Evan has not used the Alaska address since 2014. His address was updated with OGC and in every individual client's file as advised by the VA in 2014 to Indiana, and then 2018 to Virginia. OGC listed it on its website correctly both time. So this attorney fee coordinator must have been looking in a different system because OGC updated Evan's address *twice* long before the VA mis-mailed the document discussed above.

But it is not just the attorney fee coordinators that cannot update all of VA's systems. In many conversations with various VA employees, I get one of two stories: 1) some employees use old systems that are not updated because that was the system they learned when they began at the VA; and 2) updating one system does not update the other 8-14¹⁴ systems where the VA stores attorney addresses. Never once has a VA employee told me that they could update our address everywhere.

However many data systems the VA has, it needs to update our address in all of them because despite the Secretary's intent, his employees are using

¹³ Exhibit 5.

¹⁴ I don't know how many data systems the VA has running right now, but I have heard every number between eight and fourteen.

many of them they should not. But the VA won't unless this Court orders them to with the threat of sanctions for disobeying its order.

III. The M21 instructs VA staff how it should change an attorney address and we have followed the Secretary's advice on updating, but the VA still keeps botching its mailing.

We have proven that we changed our address in the way the Secretary has been suggesting for the past five years. We went further than that by submitting individual letters of our changed address for each client. And we have shown that we have even mostly done what the Secretary's response suggested. We did our part. But the VA has not reciprocated.

The Secretary tells the Court what the VA is *supposed to do* on pages seven to eleven of his response. But what the Secretary leaves out is what the VA *has done* to fix this problem. He has never answered why he continually fails to follow his protocols for ensuring veterans are not hurt by the VA mailing correspondence—including medical records—to strangers rather than their attorneys. But I can answer.

The VA will do nothing because it faces no consequences for its mail failures. The people that pay are veterans and their representatives.

CONCLUSION

The Secretary blames VetLAG for his mistakes. But he is to blame. He ought to acknowledge the VA's mistake and fix it.

It costs us hundreds of hours tracking mail, getting mail from the client, scanning it, turning it into PDFs, and letting the VA know about its error. Our clients lose benefits or have benefits unnecessarily denied—costing us fees in those instances we charge a low bono rate instead of a pro bono rate—because mail is received too late. Or never received at all.

The Secretary argues that we ought to continue to spend hundreds of hours fixing the VA's negligence like we have for the past seven years. He forgets we have no idea how many decisions we *never* receive because the VA mismailed them. And he overlooks that we have done everything he has ever suggested to fix the problems with VA's mis-mailings.

Sanctions are an important part of this petition. The VA is already required to send correspondence to the correct address. But often, nothing happens when it fails to. With sanctions looming if it mails anything to the wrong address, the VA will not continue mailing us documents to Alaska or Indiana.

The VA's indifference is negligence. There is nothing we can do, and the Secretary's responses throughout this petition prove that. Only a Court

order—with the threat of sanctions for violating that order—will ensure the VA corrects its mailing problems.

October 27, 2021

Submitted,

/s/ Harold Hoffman

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