

**Formal Grievance and Objection
Memorandum of Understanding
Between the U.S. Department of
Veterans Affairs and the U.S.
Department of Justice Authorizing VA
Attorneys to Serve as Special Assistant
United States Attorneys
Submitted by: Concerned Citizen**

**Notice of Potential Constitutional
Violations and Request for
Congressional Inquiry**

This submission places the relevant federal agencies and congressional oversight bodies on formal notice of potential constitutional and statutory concerns arising from the Memorandum of Understanding between the United States Department of Veterans Affairs (VA) and the United States Department of Justice (DOJ) authorizing certain VA attorneys to serve as Special Assistant United States Attorneys (SAUSAs) in federal court proceedings involving veterans.

The concerns identified herein relate to the potential deprivation of liberty interests, conflicts of institutional authority, and procedural deficiencies that may arise when attorneys employed by the agency responsible for providing medical care and administering disability benefits simultaneously serve as federal prosecutors seeking guardianship authority over the individuals receiving those services.

Proceedings involving guardianship or other protective arrangements implicate fundamental rights protected by the Fifth Amendment to the United States Constitution, including the right to bodily autonomy, the right to direct medical treatment, and the right to maintain control over personal affairs absent a lawful and procedurally sound judicial determination.

Where the same institutional actor:

- conducts competency evaluations
- administers disability benefits
- provides medical treatment
- and supplies the attorney advocating for guardianship authority

there exists a substantial risk that the procedural neutrality required by constitutional due process may be compromised.

The Supreme Court has long recognized that governmental actions affecting personal liberty must be accompanied by robust procedural safeguards.

In *Addington v. Texas*, 441 U.S. 418 (1979), the Court held that proceedings depriving individuals of liberty require heightened evidentiary standards.

In *Vitek v. Jones*, 445 U.S. 480 (1980), the Court recognized that involuntary medical determinations implicate protected liberty interests.

In *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), the Court affirmed that competent individuals possess a constitutionally protected liberty interest in refusing medical treatment.

Guardianship proceedings that transfer authority over medical decisions or personal affairs therefore trigger significant constitutional scrutiny.

Additionally, if the MOU operates in practice to expand federal guardianship litigation affecting veterans without appropriate regulatory procedures or public accountability, such actions may also raise questions under the Administrative Procedure Act, 5 U.S.C. § 706, which authorizes courts to set aside agency actions that are arbitrary, capricious, or contrary to constitutional rights.

The issues identified in this submission warrant careful review by congressional oversight bodies responsible for ensuring that federal agencies operate within the bounds of constitutional authority and statutory mandate.

Accordingly, this letter respectfully requests that appropriate oversight entities conduct an inquiry into:

- the implementation of the VA–DOJ Memorandum of Understanding
- the use of VA attorneys as Special Assistant United States Attorneys in guardianship–related proceedings
- the safeguards in place to prevent conflicts of interest affecting veterans’ liberty interests
- the interaction between guardianship litigation, VA competency determinations, and the VA fiduciary program.

Veterans deserve both protection and autonomy. Ensuring that guardianship proceedings affecting veterans are conducted with full constitutional safeguards is essential to preserving both.

Executive Summary

This submission formally objects to the Memorandum of Understanding (MOU) executed between the U.S. Department of Veterans Affairs (VA) and the U.S. Department of Justice (DOJ) authorizing certain VA attorneys to serve as Special Assistant United States Attorneys (SAUSAs) in federal court proceedings to seek guardianship or similar protective orders concerning veterans deemed incapable of managing their own affairs or medical decisions.

While safeguarding vulnerable veterans is an important governmental obligation, the structure created by this MOU raises serious concerns involving:

- conflicts of interest
- constitutional due process protections
- improper consolidation of institutional authority
- insufficient use of less restrictive alternatives.

The arrangement allows attorneys employed by the same agency responsible for providing medical care and administering benefits to simultaneously serve as federal prosecutors seeking guardianship authority over those same veterans.

If such proceedings intersect with VA competency determinations or disability rating reviews, the same agency may effectively control:

the medical determination

the competency finding

the benefits administration

the legal petition seeking guardianship.

This concentration of authority creates systemic risks that warrant congressional oversight and careful judicial scrutiny.

I. Relevant Provisions of the VA–DOJ Memorandum of Understanding

The VA–DOJ MOU establishes a framework under which designated VA attorneys may be appointed as Special Assistant United States Attorneys to represent the interests of the United States in federal court proceedings involving matters affecting veterans.

These appointments typically occur under the authority of: 28 U.S.C. § 543, which permits the Attorney General to appoint attorneys to assist United States Attorneys when necessary.

Under the MOU framework, VA attorneys may initiate or litigate proceedings involving protective actions affecting veterans under VA care or receiving VA benefits.

The practical effect is that attorneys employed by the VA—whose ordinary professional responsibilities involve representing the agency’s institutional interests—may assume the role of federal prosecutors seeking legal authority over veterans’ decision-making.

This arrangement raises fundamental questions regarding neutrality and independence in proceedings affecting veterans’ liberty interests.

II. Structural Conflict of Interest

VA attorneys serve as legal counsel to the Department of

Veterans Affairs. Their professional duties are to represent the interests of the agency itself.

Those interests may include:

- defending agency medical decisions
- limiting liability exposure
- managing the fiduciary program
- overseeing disability compensation expenditures.

When those same attorneys serve as SAUSAs seeking guardianship authority over veterans receiving VA care, the resulting structure creates an unavoidable institutional conflict.

Guardianship proceedings require independent advocacy because the rights at stake involve fundamental liberty interests, including the right to direct one's medical treatment and manage personal affairs.

Courts have consistently emphasized that proceedings affecting these interests require neutral processes and independent representation.

III. Constitutional Due Process Implications

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law.

Guardianship proceedings that transfer control over an individual's medical decisions and personal affairs implicate profound liberty interests.

The Supreme Court has repeatedly recognized these protections.

Relevant cases include:

Addington v. Texas, 441 U.S. 418 (1979), recognizing that proceedings depriving individuals of liberty require heightened evidentiary standards.

Vitek v. Jones, 445 U.S. 480 (1980), recognizing a protected liberty interest in avoiding involuntary medical treatment and transfer.

Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990), recognizing the constitutional right of competent individuals to refuse medical treatment.

When the same agency providing medical care also supplies the attorney seeking guardianship authority, the procedural safeguards envisioned by these precedents may be weakened.

IV. Interaction With VA Competency Determinations and Disability Benefits

The VA possesses statutory authority to determine whether

a beneficiary is competent to manage VA funds.

This authority arises under 38 U.S.C. § 5502, which authorizes the Secretary of Veterans Affairs to appoint fiduciaries when beneficiaries are deemed unable to manage their benefits.

The VA fiduciary program therefore allows the agency to control the financial management of benefits based on administrative determinations.

If administrative competency determinations become linked to guardianship proceedings prosecuted by VA attorneys acting as SAUSAs, the same agency could influence:

- competency findings**
- benefit control**
- guardianship petitions**
- litigation strategy.**

Federal courts have previously scrutinized VA fiduciary determinations.

In Freeman v. Shinseki, 24 Vet. App. 404 (2011), the Court of Appeals for Veterans Claims emphasized that VA competency determinations must be supported by adequate evidence and must comply with procedural protections afforded to beneficiaries.

Similarly, Sanders v. Brown, 9 Vet. App. 525 (1996), addressed the importance of evidentiary standards in

determining incompetency for purposes of VA benefits administration.

The intersection of administrative competency findings and federal guardianship litigation therefore warrants careful safeguards to prevent cascading consequences from a single agency determination.

V. Inspector General Findings Regarding the VA Fiduciary Program

Oversight investigations have previously identified serious deficiencies within the VA fiduciary program.

The VA Office of Inspector General has documented issues including:

- insufficient oversight of fiduciaries
- delayed investigations into misuse of funds
- inadequate monitoring of beneficiary welfare.

For example, the VA Inspector General reported that weaknesses in fiduciary oversight placed veterans at risk of financial exploitation and improper benefit management.

These findings underscore the need for independent guardianship structures rather than systems in which the same agency controls both financial administration and legal authority over veterans' affairs.

VI. Empirical Research on Guardianship Systems

Academic research and investigative reporting have repeatedly identified systemic risks associated with guardianship regimes.

Studies have documented cases in which individuals under guardianship lose substantial autonomy over:

- medical decisions
- financial assets
- residential placement
- social relationships.

Scholars and policy organizations increasingly advocate for supported decision-making models and other less restrictive alternatives to full guardianship.

The National Council on Disability has emphasized that guardianship should be imposed only as a last resort after exploring less restrictive options.

VII. Failure to Prioritize Less Restrictive Alternatives

Modern guardianship reform emphasizes the principle that courts must consider less restrictive alternatives before removing an individual's decision-making authority.

These alternatives include:

- family guardians
- trusted friends
- independent guardians ad litem
- limited guardianships
- supported decision-making agreements.

Before any federal guardianship petition is pursued, authorities should demonstrate that reasonable efforts were made to identify family members or trusted associates capable of serving in a less conflicted role.

Defaulting to federal litigation led by attorneys employed by the treating agency risks bypassing these safeguards.

VII. Requested Actions

In light of these concerns, the undersigned respectfully requests that the following actions be undertaken:

Congressional review of the VA-DOJ Memorandum of Understanding authorizing VA attorneys to serve as Special Assistant United States Attorneys.

Implementation of safeguards preventing VA attorneys from prosecuting guardianship petitions involving veterans

receiving VA medical care.

Mandatory prioritization of family members, trusted associates, or independent guardians ad litem before any federal guardianship petition.

Annual public reporting of guardianship petitions initiated under the MOU framework.

Independent review of interactions between VA competency determinations, fiduciary appointments, and guardianship proceedings.

Preservation of Rights and Remedies

Nothing in this submission should be construed as a waiver of any rights, claims, or remedies available under federal or state law.

The concerns outlined in this document involve potential constitutional issues, statutory compliance questions, and procedural safeguards affecting veterans whose autonomy, medical decision-making authority, and financial interests may be impacted by the implementation of the VA-DOJ Memorandum of Understanding authorizing VA attorneys to serve as Special Assistant United States Attorneys in proceedings affecting veterans.

Accordingly, the undersigned expressly preserves all rights

to pursue further administrative, judicial, or legislative remedies should circumstances warrant additional review.

These remedies may include, but are not limited to:

- requests for congressional investigation
- inspector general complaints
- administrative challenges under the Administrative Procedure Act
- judicial review where authorized by law
- requests for policy review by relevant federal oversight bodies.

The intent of this submission is to ensure that the potential constitutional and statutory concerns identified herein are placed on record and considered by the appropriate oversight authorities.

Protecting the rights and autonomy of veterans requires both vigilance and transparency, and raising these concerns through formal oversight channels is a necessary step toward ensuring that any guardianship-related proceedings affecting veterans are conducted with full respect for constitutional protections and independent review.

VIII. Administrative Procedure Act Concerns

The framework established by the VA–DOJ Memorandum of

Understanding may also raise concerns under the Administrative Procedure Act (APA) if implemented in a manner that alters substantive rights or procedures affecting veterans without adequate public rulemaking. The APA provides that agency actions may be set aside if they are:

- arbitrary or capricious
- an abuse of discretion
- contrary to constitutional rights
- taken without observance of procedures required by law.¹

If the MOU effectively expands the authority of VA attorneys to initiate guardianship proceedings affecting veterans' autonomy and medical decision-making, such actions may constitute a substantive policy change rather than merely an internal administrative arrangement.

Courts have repeatedly held that agencies may not circumvent APA rulemaking requirements through informal policy statements or interagency agreements that materially affect individual rights.

Relevant precedent includes:

Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983), which established that agency action must be supported by a rational basis and adequate explanation.

Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016),

holding that agencies must provide reasoned explanations when altering regulatory interpretations affecting substantive rights.

If the VA–DOJ MOU results in expanded guardianship proceedings or changes to how competency determinations interact with litigation authority, the agencies must ensure that such actions comply with APA procedural safeguards, including transparency and public accountability.

Failure to do so could render actions taken under the MOU vulnerable to judicial challenge.

IX. Historical Context: Federal Oversight Failures in Veterans Fiduciary Systems

Concerns regarding guardianship authority over veterans are not hypothetical.

The federal government has previously faced significant criticism regarding the management of fiduciary and guardianship systems affecting veterans.

Historically, oversight failures within fiduciary programs have led to instances of:

- financial exploitation
- inadequate supervision of fiduciaries
- prolonged deprivation of financial autonomy.

Investigations conducted by the VA Office of Inspector General, the Government Accountability Office, and congressional oversight bodies have documented weaknesses in monitoring fiduciaries responsible for managing veterans' benefits.

For example, GAO reviews have identified deficiencies in the VA's ability to ensure that fiduciaries properly manage funds and protect beneficiaries from misuse.

These historical oversight concerns underscore why guardianship authority affecting veterans must be subject to strict independence and transparency requirements.

Expanding litigation authority for attorneys employed by the same agency responsible for administering benefits risks recreating structural conditions that have previously allowed fiduciary abuses to occur.

A system designed to protect veterans must therefore prioritize independent guardianship structures and external oversight mechanisms.

X. Analysis of Operative Language in the VA–DOJ Memorandum of Understanding

The VA–DOJ Memorandum of Understanding governing the appointment of VA attorneys as Special Assistant United States Attorneys (SAUSAs) authorizes attorneys employed by the Department of Veterans Affairs to be cross-designated by the Department of Justice to represent the interests of the United States in federal court proceedings. Such appointments typically occur pursuant to 28 U.S.C. § 543, which permits the Attorney General to appoint attorneys to assist United States Attorneys “when the public interest so requires.”

Under the MOU structure, VA attorneys may be designated to:

- represent the United States in litigation involving VA programs
- pursue civil enforcement actions connected to VA operations
- appear in federal court as government counsel in proceedings affecting veterans receiving services from the VA.

While such cross-designation may serve administrative convenience, the application of this authority to guardianship proceedings affecting veterans raises serious legal concerns.

Guardianship litigation differs fundamentally from ordinary federal civil enforcement actions.

Guardianship proceedings directly implicate:

- **bodily autonomy**
- **medical decision-making authority**
- **control over personal finances**
- **residential placement**
- **social relationships.**

Because of the magnitude of the liberty interests involved, courts traditionally require that guardianship proceedings be initiated by parties who do not possess an institutional conflict with the individual subject to guardianship.

When VA attorneys act as SAUSAs in proceedings involving veterans receiving VA care, the same agency effectively occupies multiple roles simultaneously:

medical provider

competency evaluator

benefits administrator

litigation advocate seeking guardianship authority.

This structural overlap raises serious questions regarding neutrality and due process.

Even if the MOU is administratively permissible under 28 U.S.C. § 543, its application in the guardianship context warrants heightened scrutiny due to the fundamental rights involved.

Congressional oversight bodies should therefore examine

whether the current framework adequately protects veterans from institutional conflicts of interest when the agency responsible for their care also supplies the attorney advocating for guardianship authority.

XI. Scope of the VA Fiduciary Program and Potential Impact

The potential consequences of guardianship-related litigation must be considered in light of the scale of the VA fiduciary program, which manages benefits for veterans deemed unable to manage their financial affairs.

According to publicly available VA oversight reports and Government Accountability Office reviews:

- more than 100,000 veterans and beneficiaries participate in the VA fiduciary program in a given year
- fiduciaries collectively manage billions of dollars in benefits annually
- fiduciaries may include family members, professional fiduciaries, or institutional fiduciary entities.

When a beneficiary is determined to be incompetent under 38 U.S.C. § 5502, the VA may appoint a fiduciary to manage benefits on that individual's behalf.

Although the fiduciary program addresses financial management, such determinations often intersect with

broader questions concerning a veteran's autonomy and ability to manage personal affairs.

Oversight investigations have repeatedly identified vulnerabilities within the fiduciary system.

For example:

- GAO reports have documented weaknesses in the VA's ability to monitor fiduciaries effectively.
- VA Office of Inspector General audits have identified delays in responding to allegations of fiduciary misuse or exploitation.
- Investigative reporting has highlighted cases in which veterans under fiduciary management experienced financial abuse or inadequate oversight.

Because guardianship orders may extend far beyond financial management to include medical and personal decision-making authority, any expansion of federal guardianship litigation involving veterans must be evaluated carefully in light of these historical oversight challenges.

Even a modest increase in guardianship proceedings tied to competency determinations could affect a significant number of veterans nationwide.

Ensuring that such proceedings remain independent of institutional conflicts is therefore essential to protecting veterans' rights.

XII. Importance of Independent Safeguards in Guardianship Proceedings

Given the scale of the VA fiduciary system and the potential for guardianship proceedings to affect tens of thousands of veterans, independent safeguards must be incorporated into any litigation framework involving guardianship authority.

These safeguards should include:

- independent medical evaluations not controlled by the treating agency
- court-appointed guardians ad litem independent of VA employment
- prioritization of family members or trusted associates before institutional guardians
- periodic judicial review of guardianship orders
- accessible mechanisms allowing veterans to challenge or terminate guardianships.

Guardianship should remain a measure of last resort. Systems designed to protect vulnerable individuals must ensure that protection does not become a mechanism through which autonomy is unnecessarily removed.

XIII. Conclusion

Veterans deserve protection when they are vulnerable, but such protection must not come at the cost of constitutional liberty, procedural fairness, and independent oversight.

Allowing attorneys employed by the agency responsible for providing medical care and administering benefits to simultaneously serve as federal prosecutors seeking guardianship authority risks undermining both due process protections and public confidence in the fairness of the system.

Guardianship proceedings affecting veterans must remain independent, transparent, and grounded in the least restrictive alternatives available.

Ensuring these safeguards will help preserve both the rights of veterans and the integrity of the institutions responsible for their care.

Where to Send Oversight Complaints or Policy Objections

**U.S. Department of Veterans Affairs
Office of Inspector General**

810 Vermont Avenue NW

Washington, DC 20420

Website: <https://www.vaoig.gov>

Fraud/Complaint Hotline: <https://www.vaogig.gov/hotline>

U.S. Department of Justice Office of the Inspector General

950 Pennsylvania Avenue NW

Washington, DC 20530

Website: <https://oig.justice.gov>

Complaint Portal: <https://oig.justice.gov/hotline>

U.S. Senate Committee on Veterans' Affairs

412 Russell Senate Office Building

Washington, DC 20510

Website: <https://www.veterans.senate.gov>

General Contact: <https://www.veterans.senate.gov/contact>

U.S. House Committee on Veterans' Affairs

364 Cannon House Office Building

Washington, DC 20515

Website: <https://veterans.house.gov>

Contact Portal: <https://veterans.house.gov/contact>

U.S. Senate Judiciary Committee

224 Dirksen Senate Office Building

Washington, DC 20510

Website: <https://www.judiciary.senate.gov>

Contact: <https://www.judiciary.senate.gov/about/contact>

U.S. House Judiciary Committee

2138 Rayburn House Office Building

Washington, DC 20515

Website: <https://judiciary.house.gov>

Contact: <https://judiciary.house.gov/about/contact>

Government Accountability Office

441 G Street NW

Washington, DC 20548

Website: <https://www.gao.gov>

FraudNet Complaint Portal: <https://www.gao.gov/about/what-gao-does/fraudnet>

U.S. Senate Special Committee on Aging

G31 Dirksen Senate Office Building

Washington, DC 20510

Website: <https://www.aging.senate.gov>

Contact: <https://www.aging.senate.gov/contact>

House Committee on Oversight and Government Reform

2157 Rayburn House Office Building

Washington, DC 20515

Website: <https://oversight.house.gov>

Contact: <https://oversight.house.gov/contact>

Senate Committee on Homeland Security and Governmental Affairs

340 Dirksen Senate Office Building

Washington, DC 20510

Website: <https://www.hsgac.senate.gov>

Contact: <https://www.hsgac.senate.gov/contact>

Footnotes

¹ Administrative Procedure Act, 5 U.S.C. § 706.

References and Authorities

I. Case Law

Addington v. Texas, 441 U.S. 418 (1979).

Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990).

Freeman v. Shinseki, 24 Vet. App. 404 (2011).

Sanders v. Brown, 9 Vet. App. 525 (1996).

Vitek v. Jones, 445 U.S. 480 (1980).

II. Federal Statutes

Administrative Procedure Act, 5 U.S.C. § 706.

Appointment of Special Attorneys, 28 U.S.C. § 543.

Veterans Affairs Fiduciary Program Authority, 38 U.S.C. §

III. Government Oversight and Accountability Reports

Government Accountability Office. Veterans' Fiduciary Program: Improved Oversight Needed (various reports).

VA Office of Inspector General. Oversight of the VA Fiduciary Program (various audit reports).

VA Office of Inspector General. Audits and Reviews of the VA Fiduciary Program.

IV. Research and Policy Authorities

National Council on Disability. Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination (2018).

Wood, E., & Teaster, P. (2017). Guardianship Reform: Protecting Rights and Promoting Autonomy. American Bar Association.

