

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

**MARGARET SCHUETRUM**

**Appellant,**

**v.**

**No. 18-3233**

**ROBERT L. WILKIE,**

**Secretary of Veterans Affairs,**

**Appellee.**

**APPELLANT'S MOTION FOR SUBSTITUTION OF PARTY.**

Pursuant to U.S. Vet. App. R. 43(a)(2), Michael Schuetrum, the veteran's son and the Representative of the Estate of Appellant, Margaret Schuetrum, respectfully moves to be substituted as the Appellant in the above-captioned case. The named Appellant, Margaret Schuetrum, was the wife of the late Donald Schuetrum. Mrs Schuetrum died on November 8, 2018, owning assets in the State of Florida.

Exhibit A. Among those assets are federal benefits believed due and owing to the veteran, Donald Schuetrum. As noted in the attached (and redacted) Letters of Administration issued to Michael Schuetrum on/about May 28, 2019. Exhibit A.

Section 5121A provides that [i]f a claimant dies while ... and appeal of a decision with respect to [a claim for any benefit under the

law administered by the Secretary], is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a).” 38 U.S.C. §5121A.

Under Section 5121(a), “[u]pon the death of a widow or remarried surviving spouse, [ ] the children of the deceased veteran” are eligible to receive accrued benefits. 38 U.S.C. §5121(a)(3). Under 38 C.F.R.

§3.816(f)(1), “[i]f a Nehmer class member entitled to retroactive benefits pursuant to paragraphs (c)(1) through (c)(3), or (d)(1) through (d)(3) of this section dies prior to receiving payment of such benefits, VA shall pay such unpaid retroactive benefits to the first individual that is in existence at the time of the payment.” Those individuals include the class member’s spouse, his children (regardless of age or marital status), and the class member’s estate. 38 C.F.R. §3.816(f)(1)(i), (ii), (iv).

Michael Schuetrum is the child of the deceased veteran Donald Schuetrum and the representative of the estate of Margaret Scheutrum. As the former, he is entitled to substitute into this appeal by operation of 38 U.S.C. §5121A, §5121(a)(3) and 38 C.F.R. §3.816(f)(1). As the latter, he is eligible to receive payment of retroactive benefits because he is the administrator of the Estate of Margaret Schuetrum, which

owns all assets and property of the deceased veteran's estate. 38 C.F.R. §3.816(f)(1).

Pursuant to U.S. Vet. App. R. 27(a)(5), the undersigned counsel consulted with counsel for the Secretary, who advised that the Secretary takes no position on this motion and reserves the right to respond.

Appellant respectfully requests that the Court grant this motion for substitution of a party.

**DATE: June 22, 2019.**

Respectfully Submitted  
ATTIG | STEEL, PLLC

By: /s/ Chris Attig  
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## CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that on June 22, 2019, I served this motion on the Secretary by and through the Court's E-Filing system:

Office of the General Counsel (027K)  
ATTN: Shannon Leahy, Attorney  
Attorney for Appellee Secretary of Veterans Affairs  
U.S. Department of Veterans Affairs  
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By: /s/ Chris Attig  
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IN AND FOR THE CIRCUIT COURT FOR ORANGE  
COUNTY, FLORIDA

IN RE: PROBATE DIVISION  
ESTATE OF File No. 2019-CP-000960-O

MARGARET W SCHUETRUM  
Deceased.

LETTERS OF ADMINISTRATION

TO ALL WHOM IT MAY CONCERN

WHEREAS, Margaret W Schuetrum, a resident of Orange County, Florida, died on November 8, 2018, owning assets in the State of Florida, and

WHEREAS, Michael Schuetrum has been appointed personal representative of the estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned circuit judge, declare Michael Schuetrum duly qualified under the laws of the State of Florida to act as personal representative of the estate of Margaret W Schuetrum, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

MAY 28 2019

ORDERED on \_\_\_\_\_, 2019.

Circuit Judge

State of Florida, County of Orange

I hereby certify that the above and foregoing is a true and correct copy of the instrument filed in this office and the same is in full force and effect. Confidential items have been removed, as necessary per Fla. R. Admin. 2.240. Witness my hand and official seal this 5 day of June, 2019.

Tiffany M. Russell, Clerk of Circuit Court

By \_\_\_\_\_ Deputy Clerk

