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IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CATHERINE CORNELL,
Appellant,

v. Vet.App. No. 15-3191

ROBERT A. MCDONALD,
Secretary for Veterans Affairs,
Appellee.

BOBBY S. MOBERLY,
Intervenor.

CORRECTED MOTION FOR SUPPLEMENTAL BRIEFING

Pursuant to U.S. Vet.App. R. 27(a), Appellee respectfully moves this Court for an order allowing for supplemental briefing by Ms. Cornell and the Secretary. Pursuant to rule, Ms. Cornell's counsel has contacted both the Secretary and the Intervenor for their positions on this motion. The Secretary is opposed to this motion and advises that he will file a written response. The Intervenor is opposed to this motion and advises that he will not file a written response.

The panel in this case recognized at oral argument the VA's September 20, 2016 *Solze* letter altered significantly the issues in this appeal. This recognition was

confirmed by the additional time needed for Ms. Cornell's counsel to clarify the issues in this appeal as a result of the VA's September 20, 2016 *Solze* letter. Specifically, in relationship to the impact of the VA's failure to provide notice to Mr. Moberly's representative of the VA's May 2012 decision as concerns the importance of when Mr. Moberly's representative had actual knowledge of the VA's May 2012 decision. Additionally, supplemental briefing is required to address the scope or limitation of the VA's May 2012 decision.

The issue of the impact of the VA's failure to provide notice to Mr. Moberly's representative was not briefed by the parties in the pre-oral argument briefing. This occurred because of the VA's late recognition of its failure to provide notice to Mr. Moberly's representative. Since this issue was not included in the initial briefing, supplemental briefing is required to fully inform the court on this issue and the issues which flow from this issue.

Ms. Cornell believes that additional briefing on these issues as well as any other issues the panel would deem appropriate would aid this Court is resolving this matter. As a result of the partial decision announced from the bench concerning Mr. Moberly the need for expedited consideration of this appeal no longer exists since the VA has paid Mr. Moberly the monies withheld from his award of past due benefits and this Court has ordered that the VA not taken any further action to collect those monies following the ultimate disposition of this matter. Thus, the continued participation

by Mr. Moberly in such supplemental briefing is not required.

WHEREFORE, Ms. Cornell prays that this Court allow her to submit a supplemental memorandum of law concerning the issues set out above and allow the Secretary to respond to her memorandum of law.

Respectfully submitted,

/s/ Kenneth M. Carpenter
Kenneth M. Carpenter
Counsel for Appellant
Catherine Cornell
Electronically filed on October 24, 2016