

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

ROBERT V. CHISHOLM,)
Petitioner,)
)
v.) Vet. App. No. 15-1594
)
ROBERT A. McDONALD,)
Secretary of Veterans Affairs,)
Respondent.)

NOTICE OF CASE DEVELOPMENTS

In *Solze v. Shinseki*, this Court held that, in all cases before it, the parties are under a duty to notify the Court of developments that could deprive the Court of jurisdiction or otherwise affect its decision. 26 Vet.App. 299, 302 (2013). This duty, the Court held, is “particularly significant” in cases involving petitions for extraordinary relief filed pursuant to Rule 21 of this Court’s Rules, because, in those cases, the petitioner seeks to have the Court “inject its authority into a live controversy, and ongoing developments at the agency are highly relevant to the Court’s deliberations on petitions.” *Id.* at 302. This case involves a petition for extraordinary relief, and therefore the Secretary hereby informs the Court of two recent developments pertaining to the matter at issue here.

First, the Secretary has taken steps that will make it easier for private attorneys and accredited claims agents to obtain remote access to veterans’ electronic records when representing veterans before the agency. While this litigation was pending, the Secretary informed the Court in another case involving a writ for a petition for extraordinary relief that the Veterans Benefits Administration (VBA) recently determined that it would pay for background investigations for private attorneys and claims agents who represent veterans before the agency. (See *Carpenter v. McDonald*, U.S. Vet. App. No. 16-1133, Respondent’s Response at 6 and Attachment 2). The completion of a

background investigation, the Secretary explained, was one of several steps necessary for obtaining access to the Veterans Benefits Management System (VBMS). (Respondent's Response and Attachment 2). As a result of that change in policy, it will be easier for private attorneys and accredited claims agents to obtain VBMS access in conjunction with their representation of claimants before the agency. Although this development does not resolve the issue here—VBMS access for support staff of such private attorneys—it shows that the Secretary's actions towards resolving issues involving expanded remote access to electronic records are ongoing. Should the Secretary find a way to resolve the issue presented in this case, he will, of course, promptly notify the Court.

The second development that has occurred is that the Office of the General Counsel has accepted Petitioner's letter of October 28, 2015, which he attached to his November 5, 2015, reply to Respondent's response filed in this case, as a petition for rulemaking under 5 U.S.C. § 553(e). Specifically, the Office of the General Counsel has accepted the October 28, 2015, letter as a petition to revise 38 C.F.R. § 14.629 in a manner that would allow VA to provide electronic access for law firm support staff and remove the requirements for specific, named consent to allow such disclosures. (Attached).

/s/ Mark D. Vichich

MARK D. VICHICH

Senior Appellate Attorney
Office of the General Counsel (027E)
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
(202) 632-5985

Attorney for Appellee Secretary
of Veterans Affairs

APPELLEE'S ATTACHMENT

VA



U.S. Department
of Veterans Affairs

Office of the General Counsel
Washington DC 20420

MAY - 9 2016

In Reply Refer To: 022D

Mr. Robert V. Chisholm
Chisholm Chisholm & Kilpatrick Ltd.
One Turks Head Place
Suite 1100
Providence, RI 02903

Dear Mr. Chisholm:

The Office of General Counsel of the Department of Veterans Affairs (VA) is accepting your October 28, 2015, letter as a petition for rulemaking under 5 U.S.C. § 553(e), to revise 38 C.F.R. § 14.629 in a manner that would allow VA to provide electronic access to law firm support staff and remove the requirements for specific named consent to allow such disclosures. We are in the process of reviewing your request.

As I stated in my prior response to you, dated September 18, 2015, we understand that providing such electronic access would be more convenient for law firms and potentially improve the efficiency of the representation provided to Veterans.

As VA moves to a completely electronic claims record, VA is firmly committed to providing appropriate electronic access to all types of representatives, including attorneys. We will keep you updated on the status of your petition.

Sincerely,

A handwritten signature in black ink that reads "Richard J. Hipolit".

Richard J. Hipolit
Deputy General Counsel for Legal Policy