



Department of Veterans Affairs
Office of General Counsel
Washington DC 20420

In reply refer to: **027E**

• Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW
Washington, DC 20004

Re: **URBAN v. SNYDER**
Vet. App. No. 15-3744

January 25, 2017

Dear Mr. Block,

Under U.S. Vet. App. R. 30(b), the Secretary advises the Court of its en banc opinion in *McCarroll v. McDonald*, 28 Vet.App. 267 (2016), which the Court issued on November 7, 2016, after the parties completed briefing in this case. Oral argument in this case, *Urban v. Snyder*, is scheduled for February 7, 2017. In compliance with Rule 30(b), the Secretary submits this notice more than seven days before the argument.

In *McCarroll*, the Court responded to an appellant's argument that the Board failed to apply 38 C.F.R. § 4.7 ("Higher of two evaluations") when assigning a rating under the Secretary's rating schedule. *McCarroll v. McDonald*, U.S. Vet. App. No. 14-2345, slip op. at 9-10 (Nov. 7, 2016). In this litigation, Appellant cited this regulation for the first time in his reply brief at pages 4, 5, and 6. (See App. Rep. Br. at 4, 5, 6).

In *McCarroll*, the Court also addressed a question of whether the use of medication could constitute an unusual disability picture contemplated by 38 C.F.R. § 3.321(b)(1), where the rating criteria at issue specifically contemplate such use. *McCarroll*, slip op. at 11. The Court's holding on that question relates to the arguments raised in Appellant's brief at page 13, the Secretary's brief at pages 26-27, and Appellant's reply brief at 8-10.

Sincerely,

/s/ Mark D. Vichich
MARK D. VICHICH
Senior Appellate Attorney
Counsel for the Secretary