IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

KENDRICK E. BRADLEY,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 17-3797
	)	
ROBERT L. WILKIE,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

APPELLEE'S OPPOSED MOTION FOR LEAVE TO FILE THE SECRETARY'S RESPONSE UNDER U.S. VET. APP. R. 39(b) TO APPELLANT'S SUPPLEMENTAL APPLICATION FOR ATTORNEY FEES AND EXPENSES

Pursuant to U.S. Vet. App. R. 26(b), Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, respectfully requests leave of the Court to file the Appellee's Response Under U.S. Vet. App. R. 39(b) to Appellant's supplemental application for attorney fees and expenses, out of time. Appellant's supplemental application was filed with the Court on November 8, 2019, and so the Secretary's response was due on December 2, 2019, accounting for days on which the Court was closed. However, the Secretary's response was filed seven days out of time, on December 9, 2019.

The delay in the Secretary's filing was due to an error on the part of the undersigned counsel. The undersigned counsel misunderstood the Court's rules regarding supplemental applications for attorney's fees and expenses, which caused counsel to miscalculate the date the Secretary's response was due to the

Court. The undersigned apologizes to the Court and to Appellant for any inconvenience caused by his mistake. The Secretary understands the Court's need for an orderly administration of its cases, and the need for the parties to adhere to the timelines set by the Court's rules. However, the Secretary asks that the Court forgive this mistake and grant the Secretary's motion for leave to file his response out of time, so that the parties' arguments may be considered on the merits.

Appellant's counsel has been consulted with respect to this motion and has advised the undersigned that Appellant is opposed to this motion and will be responding in writing. To the extent that Appellant objects to the Secretary's late filing, counsel again apologizes for his mistake. To the extent that Appellant's opposition may implicate the Court's pending precedential decision in *Coley v. Wilkie*, docket number 19-0678, the Secretary believes that the instant case is distinguishable from the case presented in *Coley*. Specifically, *Coley* involves an appellant's initial application for attorney's fees and expenses, and the appellant's arguments in that case are premised on the statutory requirement that an initial application for fees and expenses be filed within 30 days of the entry of the Court's final judgment. 28 U.S.C. § 2412(d)(1)(B). This case, by contrast, involves a supplemental application for fees and expenses. The timelines for submission and litigation of supplemental applications are not set by statute, and are, instead, set by the Court's rules, which allows the Court to permit that an act to be done after the expiration of time set by its rules. U.S. Vet. App. R. 26(b). As such, this case

is distinguishable from the Court's currently pending decision in *Coley* and, accordingly, Appellant would suffer no prejudice in the granting of the Secretary's motion.

WHEREFORE, Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, respectfully requests that the Court grant his Motion for Leave to File Appellee's Response Under U.S. Vet. App. R. 39(b) to Appellant's Supplemental Application for Attorney Fees and Expenses.

Respectfully submitted,

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