

regarding the Government attorney's authority to terminate lawsuits by settlement or compromise, which principles date back well over a century. *Compare Freeport- McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) (“[G]overnment attorneys [should] settle cases whenever possible.”) (citing Executive Order on Civil Justice Reform, [Exec. Order No. 12,778, 3 C.F.R. § 359 (1991), *reprinted in* 28 U.S.C.S. § 519 (1992)]), *with* 2 Op. A.G. 482, 486 (1831);¹ *see also* Executive Order on Civil Justice Reform, Exec. Order 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. Bank of Commerce*, 174 U.S. 412(1899); *Campbell v. United States*, 19 Ct. Cl. 426, 429 (1884). The parties have resolved, to their mutual satisfaction, the issues raised by this appeal and aver that (1) their agreement does not conflict with prior precedent decisions of the Court; (2) this is not a confession of error by the Secretary; and (3) this agreement disposes of the case on appeal.

Pursuant to Rule 41(c)(2), the parties agree to unequivocally waive further Court review of and any right to appeal the Court's order on this Joint Motion, and respectfully ask that the Court enter mandate upon the granting of this motion.

¹ “An attorney conducting a suit for a party has, in the absence of that party, a right to discontinue it whenever, in his judgment, the interest of his client requires it to be done. If he abuses his power, he is liable to the client whom he injures. An attorney of the United States, except in so far as his powers may be restrained by particular acts of Congress, has the same authority and control over the suits which he is conducting. The public interest and the principles of justice require that he should have this power” 2

WHEREFORE, pursuant to Rule 42 of the Court's Rules of Practice and Procedure, the parties jointly move the Court for an order terminating the above captioned appeal.

Respectfully submitted,

FOR THE APPELLANT:

/s/ Glenn R. Bergmann
GLENN R. BERGMANN

Dated: 4/28/2020

/s/ Ryan S. Pau
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Dated: 4/28/2020

/s/ Lance Steahly
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STIPULATED AGREEMENT

WHEREAS, Ray R McCall, (Appellant) filed an appeal to the Court of Appeals for Veterans Claims on June 1, 2018, of an April 24, 2018, decision of the Board of Veterans' Appeals (Board); and

WHEREAS, the Secretary of Veterans Affairs (Secretary) and Appellant have reached a mutually satisfactory resolution of this litigation;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. The Secretary agrees to grant Appellant entitlement to Special Monthly Compensation under 38 U.S.C. § 1114(s) from August 18, 2008, to September 30, 2008, and from January 11, 2010.

2. The Secretary agrees to promptly notify the Veterans Benefits Administration (VBA) upon final disposition by the Court with respect to this settlement; and that the VBA shall take prompt action to implement this agreement.

3. The Secretary does not admit that any error was committed by the Department of Veterans Affairs or any of its employees in the adjudication of the issue that is the subject of this appeal.

4. Appellant agrees that his pending appeal in the United States Court of Appeals for Veterans Claims, U.S. Vet.App. No. 18-2799 shall be terminated, with prejudice, as to all issues presently before this Court and addressed in the April 24, 2018, Board decision following execution of this agreement.

5. Upon Appellant's submission of a jurisdictionally valid application to the Court for attorneys fees and expenses under the provisions of the Equal Access to Justice Act, 28 U.S.C. § 2412(d), Appellee will not contest that Appellant is a prevailing party and will concede that Appellee's position was not substantially justified. Appellee reserves the right to contest the amount of fees and expenses requested upon review of Appellant's application.

6. The parties agree that this agreement is entered into for the purpose of avoiding further litigation and the costs related thereto. Both parties agree that this settlement is based on the unique facts of this case and in no way should be interpreted as binding precedent for the disposition of future cases.

Respectfully submitted,

FOR THE APPELLANT:

/s/ Glenn R. Bergmann
GLENN R. BERGMANN

Dated: 4/28/2020

/s/ Ryan S. Pau
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/s/ Kenneth A. Walsh

KENNETH A. WALSH

Deputy Chief Counsel

Dated: 4/28/2020

/s/ Lance Steahly

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