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January 18, 2022

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

Re: *Gumpenberger v. McDonough*
Vet. App. No. 20-4155

Dear Mr. Block,

Pursuant to U.S. Vet. App. R. 30(b), Appellant respectfully advises the Court of pertinent and significant authority.

In *Mil.-Veterans Advoc. v. Sec'y of Veterans Affs.*, 7 F.4th 1110 (Fed. Cir. 2021), the Federal Circuit address several rule challenges to regulation promulgated by the Secretary as part of the AMA. One of these was 38 C.F.R. § 14.636(c)(1)(i), which governs when a representative can charge and earn a fee.

In that case the Secretary argued, before the Federal Circuit, that it had a long standing practice of restricting fees by treating claims to reopen a previously denied claim as a new and different claim. See *MVA*, at 1137-1138. The Court, as pertinent to the instant case, explained that 38 U.S.C. § 5904(c)'s prohibition on charging and earning fees was limited solely to work performed after the triggering event of a n initial decision by the AOJ. *MVA*, at 1138. The Court emphasized "[o]n its face, the provision [§ 5904(c)] recites no other restriction on attorney's fees." *Id.* Rather, the Court concluded, paid representation is "compensable" for any and all work performed after the initial AOJ decision. *Id.*

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What's more, the Court anchored this reading in its interpretation of prior versions of the statute that "*allow*, rather than *deny*, paid representation for reopening work under the then-existing fee provision, which required a "final decision" for attorneys' fees to be charged." *Id.* at 1141; citing *Stanley v. Principi*, 9 Vet.App. 203 (1996). Or where the prior version of the statute allowed for attorneys to charge a fee "because the fee provision 'was designed to authorize compensation for attorney services rendered after the initial proceedings, undertaken by the veteran, have failed.'" *Id.*; quoting *Carpenter v. Nicholson*, 452 F.3d 1379, 1384 (2006).

In the instant case, Mr. Gumpenberger argues that § 5104(c) only requires that a notice of disagreement be filed before an agent may charge and earn a fee. This is supported by the Federal Circuit's rulings, and explanation about the history of this statute, in *MVA*.

____/s/ Kenneth H. Dojaquez____

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