

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 21-0947

B. RIPLEY AND L. BUTLER,

PETITIONERS,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before GREENBERG, MEREDITH, and JAQUITH, *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On February 9, 2021, counsel for the petitioners filed both a petition alleging a writ of mandamus was necessary because the Secretary's practice regarding furnishing applications to prospective claimants contravenes the law and a request for class certification and class action (RCA).¹ On April 26, 2021, the Secretary filed a motion to dismiss the petition for lack of standing. On July 30, 2021, counsel for the petitioners filed a motion requesting oral argument, which the Court granted on October 19, 2021. On October 25, 2021, the Secretary filed a motion requesting clarification regarding the order of oral argument. The Court held this motion in abeyance on December 10, 2021. Also on December 10, 2021, the petitioners filed an amended petition for class injunctive relief and a writ of mandamus. And on May 24, 2022, the Secretary filed a motion to dismiss the amended petition. Now that preliminary briefing is complete, the Secretary's motion for clarification is ripe for consideration and the Court will address it.

The Secretary's motion asks the Court to resolve "the procedural implications of the instructions to the parties that oral argument will address both the Secretary's motion to dismiss the [p]etition for lack of standing as well as the merits of the [p]etition and RCA." Motion for Clarification at 1. The specific questions posed by the motion are whether oral argument will be bifurcated and, if not, which party will open and conclude the argument.

The order of oral argument is governed by U.S. VET. APP. R. 34(e), which provides: "The appellant will generally open and conclude the argument. In argument on motions, the movant generally will open and conclude the argument." In this case, oral argument will not be bifurcated,

¹ The initial petition and RCA were filed by Nyna S. Murray. On December 10, 2021, the Court added the above named petitioners, individually and as proposed class representatives, as parties to this action. The petitioners' counsel subsequently notified the Court of Ms. Murray's death, and on May 24, 2022, the Court dismissed as moot the petition as it related to Ms. Murray.

so it will address both the merits of the amended petition and the amended RCA as well as the Secretary's motions to dismiss. Under Rule 34(e), each party would generally open and conclude argument on the matter each has initiated. Of course, the petition and RCA first invoked the jurisdiction of the Court and the Secretary's motions to dismiss were made in response. Based upon the order and operation of the case events, which flow from the petitioners' filing of the petition and RCA (and amended petition and amended RCA), the Court orders that the petitioners shall open and close oral argument.

Upon consideration of the foregoing, it is

ORDERED that, in response to the Secretary's October 25, 2021, motion for clarification, the petitioners shall open and close oral argument.

DATED: June 22, 2022

PER CURIAM.

Copies to:

Kathryn E. Cahoy, Esq.

VA General Counsel (027)