

**IN THE UNITED STATES COURT
OF APPEALS FOR VETERANS CLAIMS**

AMANDA JANE WOLFE,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 18-6091
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

**RESPONDENT’S RESPONSE IN OPPOSITION TO THE THREE MOTIONS
FILED BY PETITIONER ON MAY 16, 2023**

On September 9, 2019, the Court of Appeals for Veterans Claims (CAVC) issued a decision granting a petition for a writ of mandamus. *See Wolfe v. Wilkie*, 32 Vet.App. 1 (2019). The CAVC entered judgment on April 15, 2020, and on June 11, 2020, the Secretary filed a timely appeal to the United States Court of Appeals for the Federal Circuit (Federal Circuit).

On March 17, 2022, the Federal Circuit unanimously reversed, without remand, this Court’s September 9, 2019, decision. *See Wolfe v. McDonough*, 28 F.4th 1348 (Fed. Cir. 2022). Judgment entered on that same date. On May 9, 2022, the Federal Circuit formally issued mandate. Petitioner did not file a petition for certiorari with the Supreme Court within 90 days of the entry of judgment. The expiry of the period for filing the certiorari petition marked the close of the *Wolfe* litigation.

More than a year later, on May 16, 2023, Petitioner, Amanda Jane Wolfe, filed the following three motions in CAVC docket number 18-6091 in a misguided attempt to resurrect and relitigate this case: (1) a motion for substitution of party, (2) a motion for leave for the proposed substitute parties to file a second amended petition for class relief in the nature of a writ of mandamus and, (3) a motion for leave to exceed the page limit for the second amended petition. The Secretary opposes all three motions.

Petitioner's motions are premised on the mistaken belief that, because the CAVC has not entered mandate on its docket, case number 18-6091 remains open for additional litigation. It does not. To the extent 38 U.S.C. § 7291(b)(2) governs the matter, the only act the CAVC can possibly take at this point is the issuance of a "decision . . . in accordance with the mandate of the United States Court of Appeals for the Federal Circuit," i.e., a decision stating that this case is closed via the Federal Circuit's mandate. This is a ministerial act that may not even be necessary, since the mandate of the Federal Circuit indisputably governs, whether or not the CAVC issues a "decision" acknowledging it. In other words, there is absolutely no room for the CAVC to take any substantive action in this case. The substantive litigation ended when the time allowed for filing a petition for certiorari expired and no such petition was filed. See 38 U.S.C. § 7291; see also *Impresa Construzioni Geom. Domenico Garufi v. United States*, 531 F.3d 1367 (Fed. Cir. 2008); *Kiddey v. Shinseki*, 22 Vet.App. 367 (2009).

Relatedly, although the CAVC docket in case number 18-6091 does not reflect the entry of mandate, “the issuance of mandate is merely a ministerial act reflecting that the Court’s judgment has become final.” *Kiddey*, 22 Vet.App. at 373. It has no bearing on actual finality. *Id.* There were no conditions that prevented Petitioner from filing a certiorari petition with the Supreme Court within 90 days from the Federal Circuit’s decision in *Wolfe*. She chose not to do so. Therefore, the judgment of the Federal Circuit, issued on March 17, 2022, is final and the *Wolfe* litigation is over. See 38 U.S.C. § 7291; Fed.Cir. R.41. Whether or not the CAVC has entered mandate on its docket has no bearing on that finality.

In her motion for substitution of party, Petitioner Wolfe asserts that she no longer wishes to serve as the named petitioner in this case and that six unrelated veterans, referred to as “movants,” seek “to be substituted as named petitioners for the purpose of adjudication of the second amended petition.” (Motion to Substitute at 2). This motion should be denied because there is no live case into which the proposed movants can be substituted. The Federal Circuit reversed this Court’s September 9, 2019, decision in *Wolfe* in full and without remand. See *Wolfe v. McDonough*, 28 F.4th 1348 (Fed. Cir. 2022). Petitioner did not file a petition for certiorari with the Supreme Court within 90 days of judgment and therefore the Federal Circuit’s mandate governs. There is no longer a “case” associated with docket number 18-6091 into which the proposed movants can be substituted. Petitioner’s motion to substitute should therefore be denied.

Petitioner's motion for leave for the proposed substitute parties to file a second amended petition for class relief in the nature of a mandamus (and the associated motion to exceed the page limit for the second amended petition) are similarly misplaced and should also be denied. The movants appear to premise their motion for leave to file a second amended petition on the notion that, because the CAVC has not entered mandate on its docket, this litigation remains open. This is incorrect. As noted, the issuance of mandate is nothing more than a ministerial act reflecting that the Court's judgment has become final. It has no bearing on actual finality. *Kiddey*, 22 Vet.App. at 373. Indeed, this Court's rules explicitly state as much, i.e., "entry of mandate on the docket is a ministerial act and may not occur on the date of mandate." CAVC R. 41.

Movants also fail to appreciate that this Court's September 9, 2019, decision in *Wolfe* was reversed *in its entirety*. See *Wolfe v. McDonough*, 28 F.4th 1348 (Fed. Cir. 2022). Meaning there is no certified *Wolfe* class, there is no class counsel, and there is no valid order directing the Secretary to readjudicate any previously denied reimbursement claims. This Court's September 9, 2019, decision in *Wolfe* is void ab initio.

While the proposed movants are certainly free to file a new writ petition with this Court if they chose to do so, any new petition must be docketed under a separate docket number as a new action. There is no authority that allows a petition to be amended after Federal Circuit mandate. See 38 U.S.C. § 7291.

WHEREFORE, Respondent opposes Petitioner's May 16, 2023, motion to substitute party, motion for leave for the proposed substitute parties to file a second amended petition, and motion to exceed the page limit for the second amended petition. These motions should be denied.

Respectfully submitted,

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