

## SWORN DECLARATION OF CHRIS ATTIG

STATE OF ARKANSAS

§

COUNTY OF PULASKI

§

Pursuant to 28 U.S.C. 1746, I, Chris Attig, declare under penalty of perjury that the foregoing is true and correct:

1. "My name is Chris Attig. I am more than eighteen years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the matters set forth below.
2. On March 2, 2018, at 2:08pm (Central time), the text of Footnote 8 to my client's opening brief was as follows:

"The Secretary framed his defense by relying on the CAVC precedential opinion in *Prickett* to relieve him of any affirmative duty to produce a copy of a medical exam opinion as part of the Secretary's duty to assist. *But see, Prickett v. Nicholson*, 20 Vet. App. 370 (2006). **In *Prickett*, the Court relied on cases that interpreted 38 U.S.C. §7109.** *Thurber v. Brown*, 5 Vet. App. 119 (1993); *Austin v. Brown*, 6 Vet. App. 547 (1994); *contradistinguish*, 38 U.S.C. §5103A, Pub. L. 106-475, §3(a), 114 Stat. 2097 (November 9, 2000). Mr. Martinez argues *Prickett* does not apply to his appeal; to the extent the Secretary argues for *Prickett's* application, Mr. Martinez asks the Court to over-rule it." (underlining added).

3. The portions in <bold> font were highlighted with "track changes" suggestions to review and accept.
4. I later returned to the brief for a final round of edits which typically includes reviewing and accepting proposed changes through the "track changes" feature of Microsoft Word, and saved the final version for filing at 3:56 pm (Central time). The version of the brief saved on my laptop had the following language in Footnote 8, and did not include the underlined phrase in Paragraph 2:

"The Secretary framed his defense by relying on the CAVC precedential opinion in *Pricket* to relieve him of any affirmative duty to produce a copy of a medical exam opinion as part of the Secretary's duty to assist. *But see, Pricket v. Nicholson*, 20 Vet. App. 370 (2006). In *Pricket*, the Court interpreted 38 U.S.C. §7109, which predates §5103A, and held the BVA has no *Thurber-Austin* duty to provide a copy of a medical opinion procured by the BVA. *Thurber v. Brown*, 5 Vet. App. 119 (1993); *Austin v. Brown*, 6 Vet. App. 547 (1994); *contradistinguish*, 38 U.S.C. §5103A, Pub. L. 106-475, §3(a), 114 Stat. 2097 (November 9, 2000). Mr. Martinez argues *Pricket* does not apply to his appeal; to the extent the Secretary argues for *Pricket's* application, Mr. Martinez asks the Court to over-rule it."

5. In my final proof-read of the brief, it appears that in my haste to edit and file the brief, I deleted the proposed changes to Footnote 8 instead of accepting them.
6. Nevertheless, I most certainly should have noticed the correction by reviewing the brief one more time prior to filing.
7. To prevent this kind of mistake from happening again, my firm is implementing certain additional steps in the preparation, editing proof-reading, and filing of briefs, including allowing much more time between the copy-editing and final proof-reading to ensure that I review paper copies of final briefs to be filed with the Court with “fresh eyes.”
8. My mistake was a human error resulting from regrettable haste in editing. I did not intend to mislead the Court or the Secretary to believe that *Prickett* stood for something other than its holding.
9. I apologize to the Secretary and the Court for this error, and deeply regret it happened.

Executed on August 9, 2018.

Signed: /s/ Chris Attig