

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

Misc. No. 14-07

IN RE: 38 U.S.C. § 5103(a) and *Sanders v. Nicholson*, \_\_ F.3d \_\_, No. 06-7001, 2007 WL 1427720 (Fed. Cir. May 16, 2007).

Before GREENE, *Chief Judge*, and KASOLD, HAGEL, MOORMAN,  
LANCE, DAVIS, and SCHOELEN, *Judges*.

**ORDER**

Pursuant to 38 U.S.C. § 7264(a) and Rule 2 of the Court's Rules of Practice and Procedure (Rules), the Court has determined that there is a need to issue a general order in light of *Sanders v. Nicholson*, \_\_ F.3d \_\_, No. 06-7001, 2007 WL 1427720 (Fed. Cir. May 16, 2007). In *Sanders*, the United States Court of Appeals for the Federal Circuit held (1) that any error in the Secretary of Veterans Affairs' compliance with notice under 38 U.S.C. § 5103(a) or 38 C.F.R. § 3.159(b)(1) should be presumed prejudicial to the claimant, and (2) that the Secretary has the burden of rebutting this presumption. *Sanders*, \_\_ F.3d at \_\_, 2007 WL 1427720, at \*10. Therefore, the Court will suspend the application of certain Rules in cases where the appellant has alleged an error under section 5103(a) and/or § 3.159(b)(1), and will direct appropriate proceedings. This order does not preclude the Court from disposing of a pending case prior to the expiration of the time allowed in this order. Accordingly, it is

ORDERED that, as to any appeal in which a merits decision has not yet been rendered, the Secretary may file, and serve under Rule 25(c), not later than 20 days after the date of this order, a memorandum of law on the effect of *Sanders, supra*, on the pending appeal. If the time for filing the Secretary's brief has not expired by the date of this order, the Secretary may include these matters in his brief. If the time for filing the Secretary's brief has expired, or will expire within 20 days after the date of this order, and the appellant raised in his brief an error with respect to section 5103(a) and/or § 3.159(b)(1), the Secretary may file, within 20 days after the date of this order, a separate memorandum of law addressing these matters. It is further

ORDERED that, not later than 20 days after the Secretary files any memorandum of law, the appellant may file, and serve under Rule 25(c), a memorandum of law addressing these matters. If the Secretary does not file a memorandum of law, the appellant may file a memorandum not later than 40 days after the date of this order. It is further

ORDERED that any deadline established by Court order in a particular case for filing of supplemental pleadings regarding the above *Sanders*-related matters remains in full force and is not altered by this miscellaneous order. It is further

ORDERED that any memorandum of law filed pursuant to this order must conform to the page and typeface limitations in Rule 32(b) and (g) for reply briefs. It is further

ORDERED that Rule 30(b) is suspended as to *Sanders, supra*.

DATED: July 3, 2007

BY THE COURT:

WILLIAM P. GREENE, JR.  
Chief Judge