

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 3-05

IN RE: 38 U.S.C. § 7261(b)(2) and *Mayfield v. Nicholson*, 19 Vet.App. ___, No. 02-1077, 2005 WL 957317 (Apr. 14, 2005)

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

ORDER

Pursuant to the authority of 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 the Court's issuance on April 14, 2005, of its opinion in *Mayfield v. Nicholson*, 19 Vet.App. ___, No. 02-1077, 2005 WL 957317 (Apr. 14, 2005). In that opinion, the Court made several holdings pertaining to 38 U.S.C. § 5103(a) (notice to claimants regarding substantiating their claims), 38 C.F.R. § 3.159(b)(1) (same), 38 U.S.C. § 7104(d)(1) (decisions of the Board of Veterans' Appeals (Board) must contain statements of reasons or bases), and 38 U.S.C. § 7261(b)(2) (Court must "take due account of the rule of prejudicial error). Regarding prejudicial error, the *Mayfield* opinion (1) requires, in the context of notice under section 5103(a) and § 3.159(b)(1), that appellants who are represented before the Court must (although certainly unrepresented appellants may also wish to do so) present a plausible showing of how they were prejudiced by any error that they assert was made in a Board decision or otherwise in the processing of a claim by the Department of Veterans Affairs and (2) articulates standards by which the Court will apply the rule of prejudicial error in section 7261(b)(2). The text of the Court's opinion is available on the Court's website at www.vetapp.gov. Accordingly, the Court suspends the application of certain rules in cases in which the appellant has alleged or is alleging in his or her brief an error with respect to section 5103(a) and/or § 3.159(b)(1) and, in order to direct appropriate proceedings, it is

ORDERED that, as to any appeal in which a merits decision has not yet been rendered, the appellant, or the parties jointly, may (without leave of the Court or unless otherwise ordered by the Court) file, and serve under Rule 25(c), not later than 15 days after the date of this order, a memorandum of law in light of the above requirements and standards set forth in *Mayfield, supra*, in the context of section 5103(a)/§ 3.159(b). If the time for filing the appellant's brief or reply brief has not expired on the date of this order, the appellant may include these matters in his or her brief or reply brief, as the case may be. If the time for filing the appellant's reply brief has expired, or will expire within 15 days after the date of this order, and the appellant raised in his or her brief an error with respect to section 5103(a)/§ 3.159(b), the appellant may file a separate memorandum of law addressing these matters. It is further

ORDERED that, if an appellant files a reply brief or a separate memorandum of law in accordance with the above decretal paragraph, the Secretary, not later than 15 days after service of that reply brief or memorandum of law, as the case may be, may file, and serve under Rule 25(c),

a memorandum of law addressing these matters or, if no such reply brief or memorandum of law is filed by the appellant, the Secretary may file a memorandum of law not later than 30 days after the date of the issuance of this order or 15 days after the date on which a reply brief was due to be filed, whichever date is later. Failure of the Secretary to file a timely response may be considered to be his nonopposition to any contention in the appellant's brief, reply brief, or memorandum of law, as the case may be, regarding the above *Mayfield*-related matters. It is further

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

ORDERED that any motion or other paper filed pursuant to this order must conform to the page and typeface limitations set forth in Rule 32(b) and (g) for reply briefs. It is further

ORDERED that Rule 30(b) (Citation of Supplemental Authorities) is suspended as to *Mayfield, supra*.

The Court notes that this order is permissive as to actions that parties may wish to take and that this order does not preclude the Court from disposing of a pending case prior to the expiration of the time allowed in this order for the parties to file a paper pursuant to this order in a particular case.

This order shall take effect immediately.

DATED: June 2, 2005

BY THE COURT:

DONALD L. IVERS
Chief Judge