



UNITED STATES TAX COURT

Washington, D.C. 20217

April 21, 2020

PRESS RELEASE

Chief Judge Maurice B. Foley announced today that the United States Tax Court has proposed amendments to its Rules of Practice and Procedure. These Rules amendments are proposed in response to comments received from interested parties and reflect the Court's commitment to simplify and modernize the Rules. The proposed amendment to Rule 24 adopts language similar to that of current Rule 24, but incorporates simplified procedures for the withdrawal and substitution of counsel, and clarifies limitations on counsel's representation of a party to more closely follow the ABA Model Rules of Professional Conduct. The proposed amendments to Rules 21, 260, 261, and 262 are conforming amendments.

For clarity, the Notice attached to this press release includes two versions of Rule 24 with the proposed amendments. The first version of the amended Rule includes strike outs and underlining to identify language deleted from and added to the former Rule, respectively. The second version of the amended Rule is an unmarked copy incorporating all proposed amendments. The Notice also includes the conforming amendments. All of these materials are available at the Court's Web site at www.ustaxcourt.gov.

Chief Judge Foley also announced that the Tax Court invites public comment on the proposed amendments. Written comments must be received by May 31, 2020. Comments must be addressed to:

Stephanie A. Servoss
Clerk of the Court
United States Tax Court
400 Second St., N.W., Room 111
Washington, D.C. 20217

NOTICE OF PROPOSED AMENDMENTS TO RULE 24 OF THE TAX COURT
RULES OF PRACTICE AND PROCEDURE AND CONFORMING
AMENDMENTS

April 21, 2020

Proposed Amendment to Rule 24

RULE 24. APPEARANCE AND REPRESENTATION

(a) Appearance:

(1) *General*: Counsel may enter an appearance either by ~~subscribing~~signing and filing:

(A) the petition or other initial pleading or document in accordance with subparagraph ~~(1)~~;

~~(2B)~~ hereof, or thereafter by filing an entry of appearance in accordance with subparagraph (3) hereof or, in a case not calendared for trial or hearing, or

(C) a substitution of counsel in accordance with paragraph (d) hereof.

~~(2) *Appearance in Initial Pleading*: If (A) the petition or other paper initiating the participation of a party in a case is subscribed by counsel admitted to practice before the Court, and (B) such initial paper contains the mailing address and Tax Court bar number of counsel and other information required for entry of appearance (see subparagraph (3)), then (C) that counsel shall be recognized as representing that party and no separate entry of appearance shall be necessary. Thereafter counsel shall be required to notify the Clerk of any changes in applicable information to the same extent as if counsel had filed a separate entry of appearance.~~

~~(3) *Subsequent Appearance*: Where counsel has not previously appeared, counsel shall file an entry of appearance in duplicate, signed by counsel individually, containing the~~

See Rules 22, 23, and 26 related to signing and filing papers with the Court.

(2) *Required Information*: Any paper that counsel may use to enter an appearance must include:

(A) the case name and docket number of the case, the (if any);
and

(B) counsel's name, mailing address, email address (if any), telephone number, and Tax Court bar number of counsel so appearing, and a statement that counsel is admitted to practice before the Court. A separate entry of appearance, in duplicate, shall be filed for each additional docket number in which counsel shall appear. The entry of appearance shall be substantially in the form set forth in Appendix I. The Clerk shall be given prompt written notice, filed in duplicate for each docket number, of any change in the foregoing information.

(43) Counsel Not Admitted to Practice: No An entry of appearance filed by counsel not admitted to practice before this Court will be not effective until counsel shall have been admitted, but counsel may be recognized as counsel in a pending case to the extent permitted by the Court and then only where. Where it appears that counsel who is not admitted to practice can and will be promptly admitted to practice, the Court may recognize that counsel in a pending case. See Rule 200 F for the procedure for admission to practice before the Court and Rule 201(a) regarding conduct of practice before the Court.

(4) Limited and Special Appearance:

(A) Limited Entry of Appearance: Counsel may file a limited entry of appearance to the extent permitted by the Court.

(B) Special Appearance: The Court may, in its discretion, temporarily recognize an individual or counsel as the party's representative, and no separate entry of appearance is necessary.

(5) Law Student Assistance: A law student may assist counsel with drafting a pleading or other document to be filed with the Court and, W with the permission of the presiding Judge or Special Trial Judge, and under the counsel's direct supervision of counsel in a case, a law student may assist such counsel by presenting all or any part of the party's case at a hearing or trial. In addition, a law student may assist counsel in a case in drafting a pleading or other document to be filed with the Court. A law student may not, however, enter an

appearance in any case, be recognized as counsel in a case, or sign a pleading or other document filed with the Court. ~~The Court may acknowledge the law student assistance.~~

(b) ~~Personal Representation Without Counsel:~~ ~~In the absence of appearance by counsel, a party will be deemed to appear on the party's own behalf. An individual party~~

(1) General: A party that is not represented by counsel may proceed as follows:

(A) an individual may represent himself or herself. A corporation or;

(B) an authorized officer may represent a corporation;

(C) an authorized member may represent an unincorporated association may be represented by an authorized officer of the corporation or by an authorized member of the association. An; and

(D) a fiduciary may represent an estate or trust may be represented by a fiduciary thereof. Any such person shall state, in the.

(2) Required Information:

(A) The initial pleading or other paper filed by or for the party, such person's name, address a party must include the party's name, mailing address, email address (if any), and telephone number, and thereafter shall promptly notify the Clerk in writing, in duplicate for each docket number involving that party, of any change in that information.

(B) If the initial pleading or other paper is filed by an authorized representative or fiduciary, it must also include the authorized representative's or fiduciary's name, mailing address, email address (if any), and telephone number.

(c) Withdrawal of Counsel:

(1) Notice of Withdrawal as Counsel: Counsel of record desiring to withdraw ~~such counsel's appearance, or any~~ as counsel for a party may file a notice of withdrawal as counsel if:

(A) more than one counsel have entered appearances for that party;

(B) the notice of withdrawal is filed no later than 30 days before the first day of the Court's session at which the case is calendared for trial; and

(C) there is no objection to the withdrawal.

(2) Motion to Withdraw as Counsel: Counsel desiring to withdraw as counsel for a party but who is ineligible to do so under subparagraph (c)(1) must file a motion requesting leave.

(3) Motion to Withdraw Counsel by Party: A party desiring to withdraw the appearance of that party's ~~counsel of record for such party,~~ must file a motion with the Court requesting leave therefor, ~~showing that~~.

(4) General Requirements:

(A) Any notice or motion under this paragraph must include a statement that counsel or the party provided prior notice of the notice or motion has been given by such counsel to such the counsel's client; or such the party's counsel, as the case may be, and to each of the other parties to the case or their counsel; and stating whether there is any objection to the motion.

(B) Any motion to withdraw as counsel and a motion or to withdraw counsel shall each must also state include the party's then-current mailing address, email address (if any), and telephone number of the party in respect of whom or by whom the motion is filed. The Court may, in its discretion, deny such motion.

(d) Substitution of Counsel: ~~In a case not~~

(1) No later than 30 days before the first day of the Court's session at which the case is calendared for trial or hearing, counsel of record for a party may withdraw such counsel's appearance, and counsel who has not previously appeared for a party in that case may enter an appearance; by filing a substitution of counsel, showing that substantially in the form set forth in Appendix, Form 8.

(2) The substitution of counsel must state that:

(A) substituted counsel seeks to enter an appearance for the party;

(B) current counsel's appearance is withdrawn for the party;

(C) current counsel provided prior notice of the substitution has been given by counsel of record to such the counsel's client; and to each of the other parties to the case party or their counsel; and that

(D) there is no objection to the substitution.

(3) The substitution of counsel shall must be signed by current counsel of record and by substituted counsel individually, and shall contain the information required by subparagraph (3) of paragraph (a). The substitution of counsel shall be substantially in the form set forth in Appendix I. Thereafter a)(2), and be filed by the substituted counsel.

(4) Counsel entering an appearance as substituted counsel shall be required to notify the Clerk of any changes in applicable information to the same extent as if such counsel had filed a separate within 30 days of the first day of the Court's session at which the case is calendared for trial must file an entry of appearance:

(e) Death of Counsel: ~~If counsel of record dies, the Court shall be so notified, and other counsel may enter an appearance under subparagraph (a), and any related withdrawal of counsel must be undertaken in accordance with~~ subparagraph (c).

(e) Change in Required Information: A party or counsel must promptly notify the Clerk in writing of any change in the information required under this Rule, or of the death of counsel, for each docket number involving that party or in which counsel has entered an appearance.

(f) Change in Party or Authorized Representative or Fiduciary: Where (1) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in ~~such~~the representative or fiduciary, or (2) there is a substitution of parties in a pending case, counsel ~~subscribing~~signing the motion resulting in the Court's approval of the change or substitution ~~shall~~will thereafter be deemed first counsel of record for the representative, fiduciary, or party. Counsel of record for the former representative, fiduciary, or party; desiring to withdraw ~~such counsel's appearance shall~~as counsel must file a motion in accordance with ~~paragraph~~subparagraph (c)(2).

(g) Limitations on Representation:

(g1) Conflict of Interest: If any counsel of record (~~1A~~) was involved in planning or promoting a transaction or operating an entity that is connected to any issue in a case, or (2B) represents more than one person with differing interests with respect to any issue in a case, ~~or (3) is a potential witness in a case, then such~~that counsel must either secure the client's informed written consent of the client (but only as to items (1) and (2)); withdraw from the case; or take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct, ~~and particularly. See Rules 1.7, and 1.8, and 3.7 thereof~~ABA Model Rules of Professional Conduct. The Court may inquire into the circumstances of counsel's employment in order to deter such violations. See Rule 201.

(2) Counsel as Witness:

(A) Counsel may not represent a party at trial if the counsel is likely to be a necessary witness within the meaning of the ABA Model Rules of Professional Conduct unless: (i) the testimony relates to an uncontested issue; (ii) the testimony relates to the nature and value of legal services rendered in the case; or (iii) disqualification of

counsel would work substantial hardship on the client. See Rule 3.7, ABA Model Rules of Professional Conduct.

(B) Counsel may represent a party at trial in which another professional in the counsel's firm is likely to be called as a witness unless precluded from doing so under the ABA Model Rules of Professional Conduct. See Rules 1.7 and 1.9, ABA Model Rules of Professional Conduct.

Explanation

It is proposed that Rule 24 be amended both stylistically and to simplify the procedures governing the appearance, substitution, and withdrawal of counsel representing a party, and to clarify certain limitations on counsel's ability to represent a party. Specifically, the proposed amendments would (1) enable current counsel to withdraw by filing a notice of withdrawal, instead of a motion, no later than 30 days before the start of the Court's session if certain requirements are met; (2) enable substitute counsel to enter an appearance by filing a notice of substitution, instead of a motion, no later than 30 days before the start of the Court's session if certain requirements are met; (3) clarify the Court's current practice of permitting limited entries of appearance and special appearances; and (4) clarify the restrictions on counsel's representation of a party where counsel may have a potential or actual conflict of interest, or where counsel may be called as a witness in a case in which counsel has entered an appearance. In addition, as part of the Court's effort to modernize and update its Rules, the proposed amendments would reformat and simplify Rule 24 to enhance its readability and clarity.

Post-Amendment Rule 24

RULE 24. APPEARANCE AND REPRESENTATION

(a) Appearance:

(1) *General:* Counsel may enter an appearance by signing and filing:

- (A) the petition or other initial pleading or document;
- (B) an entry of appearance; or
- (C) a substitution of counsel in accordance with paragraph (d).

See Rules 22, 23, and 26 related to signing and filing papers with the Court.

(2) *Required Information:* Any paper that counsel may use to enter an appearance must include:

- (A) the case name and docket number (if any); and
- (B) counsel's name, mailing address, email address (if any), telephone number, and Tax Court bar number.

(3) *Counsel Not Admitted to Practice:* An entry of appearance filed by counsel not admitted to practice before the Court is not effective until counsel is admitted. Where it appears that counsel who is not admitted to practice can and will be promptly admitted to practice, the Court may recognize that counsel in a pending case. See Rule 200 for the procedure for admission to practice before the Court and Rule 201(a) regarding conduct of practice before the Court.

(4) *Limited and Special Appearance:*

- (A) Limited Entry of Appearance: Counsel may file a limited entry of appearance to the extent permitted by the Court.

(B) **Special Appearance:** The Court may, in its discretion, temporarily recognize an individual or counsel as the party's representative, and no separate entry of appearance is necessary.

(5) *Law Student Assistance:* A law student may assist counsel with drafting a pleading or other document to be filed with the Court and, with the permission of the presiding Judge or Special Trial Judge, and under counsel's direct supervision, may present all or any part of the party's case at a hearing or trial. A law student may not, however, enter an appearance in any case, be recognized as counsel in a case, or sign a pleading or other document filed with the Court.

(b) Representation Without Counsel:

(1) *General:* A party that is not represented by counsel may proceed as follows:

(A) an individual may represent himself or herself;

(B) an authorized officer may represent a corporation;

(C) an authorized member may represent an unincorporated association; and

(D) a fiduciary may represent an estate or trust.

(2) *Required Information:*

(A) The initial pleading or other paper filed by a party must include the party's name, mailing address, email address (if any), and telephone number.

(B) If the initial pleading or other paper is filed by an authorized representative or fiduciary, it must also include the authorized representative's or fiduciary's name, mailing address, email address (if any), and telephone number.

(c) Withdrawal of Counsel:

(1) *Notice of Withdrawal as Counsel:* Counsel desiring to withdraw as counsel for a party may file a notice of withdrawal as counsel if:

(A) more than one counsel have entered appearances for that party;

(B) the notice of withdrawal is filed no later than 30 days before the first day of the Court's session at which the case is calendared for trial; and

(C) there is no objection to the withdrawal.

(2) *Motion to Withdraw as Counsel:* Counsel desiring to withdraw as counsel for a party but who is ineligible to do so under subparagraph (c)(1) must file a motion requesting leave.

(3) *Motion to Withdraw Counsel by Party:* A party desiring to withdraw the appearance of that party's counsel must file a motion requesting leave.

(4) *General Requirements:*

(A) Any notice or motion under this paragraph must include a statement that counsel or the party provided prior notice of the notice or motion to the counsel's client or the party's counsel and to each of the other parties to the case or their counsel and whether there is any objection to the motion.

(B) Any motion to withdraw as counsel or to withdraw counsel must also include the party's then-current mailing address, email address (if any), and telephone number.

(d) Substitution of Counsel:

(1) No later than 30 days before the first day of the Court's session at which the case is calendared for trial, counsel who has not previously appeared for a party in that case may enter an appearance by filing a substitution of counsel substantially in the form set forth in Appendix, Form 8.

(2) The substitution of counsel must state that:

(A) substituted counsel seeks to enter an appearance for the party;

(B) current counsel's appearance is withdrawn for the party;

(C) current counsel provided prior notice of the substitution to the counsel's client and to each other party or their counsel; and

(D) there is no objection to the substitution.

(3) The substitution of counsel must be signed by current counsel and by substituted counsel, contain the information required by subparagraph (a)(2), and be filed by the substituted counsel.

(4) Counsel entering an appearance as substituted counsel within 30 days of the first day of the Court's session at which the case is calendared for trial must file an entry of appearance under subparagraph (a), and any related withdrawal of counsel must be undertaken in accordance with subparagraph (c).

(e) Change in Required Information: A party or counsel must promptly notify the Clerk in writing of any change in the information required under this Rule, or of the death of counsel, for each docket number involving that party or in which counsel has entered an appearance.

(f) Change in Party or Authorized Representative or Fiduciary: Where (1) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in the representative or fiduciary, or

(2) there is a substitution of parties in a pending case, counsel signing the motion resulting in the Court's approval of the change or substitution will thereafter be deemed first counsel of record for the representative, fiduciary, or party. Counsel of record for the former representative, fiduciary, or party desiring to withdraw as counsel must file a motion in accordance with subparagraph (c)(2).

(g) Limitations on Representation:

(1) *Conflict of Interest*: If any counsel of record (A) was involved in planning or promoting a transaction or operating an entity that is connected to any issue in a case, or (B) represents more than one person with differing interests with respect to any issue in a case, then that counsel must either secure the client's informed written consent; withdraw from the case; or take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct. See Rules 1.7 and 1.8, ABA Model Rules of Professional Conduct. The Court may inquire into the circumstances of counsel's employment in order to deter such violations. See Rule 201.

(2) *Counsel as Witness*:

(A) Counsel may not represent a party at trial if the counsel is likely to be a necessary witness within the meaning of the ABA Model Rules of Professional Conduct unless: (i) the testimony relates to an uncontested issue; (ii) the testimony relates to the nature and value of legal services rendered in the case; or (iii) disqualification of counsel would work substantial hardship on the client. See Rule 3.7, ABA Model Rules of Professional Conduct.

(B) Counsel may represent a party at trial in which another professional in the counsel's firm is likely to be called as a witness unless precluded from doing so under the ABA Model Rules of Professional Conduct. See Rules 1.7 and 1.9, ABA Model Rules of Professional Conduct.

Conforming Amendments

RULE 21. SERVICE OF PAPERS

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(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. Unless otherwise provided in these Rules or directed by the Court, all other papers required to be served on a party shall be served by the party filing the paper, and the original paper shall be filed with a certificate by a party or a party's counsel that service of that paper has been made on the party to be served or such party's counsel. For the form of such certificate of service, see Appendix, Form 9; ~~Appendix I~~. Such service may be made by:

* * * * *

(4) *Change of Address:* The Court shall be promptly notified, by a notice of change of address filed with the Court, of the change of mailing address of any party, any party's counsel, or any party's duly authorized representative in the case of a party other than an individual (see Rule 24(a)(2), (a)(3), (b), and (d)(e)). A separate notice of change of address shall be filed for each docket number. For the form of such notice of change of address, see Appendix, Form 10 ~~in Appendix I~~.

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Explanation

It is proposed that Rule 21(b)(1) and (4) be amended to remove references to Appendix I and replace them with references to Appendix. It is also proposed that Rule 21(b)(4) be amended to revise the reference to Rule 24 to account for proposed changes to that Rule.

**RULE 260. PROCEEDING TO ENFORCE OVERPAYMENT
DETERMINATION**

* * * * *

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court determined the overpayment which the petitioner now seeks to enforce will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

Explanation

It is proposed that Rule 260(e) be amended to revise the reference to Rule 24 to account for proposed changes to that Rule.

RULE 261. PROCEEDING TO REDETERMINE INTEREST

* * * * *

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court redetermined the deficiency or determined the overpayment the interest in respect of which the petitioner now seeks a redetermination will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

Explanation

It is proposed that Rule 261(e) be amended to revise the reference to Rule 24 to account for proposed changes to that Rule.

**RULE 262. PROCEEDING TO MODIFY DECISION IN
ESTATE TAX CASE INVOLVING SECTION 6166
ELECTION**

* * * * *

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court entered the decision which the petitioner now seeks to modify will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

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Explanation

It is proposed that Rule 262(e) be amended to revise the reference to Rule 24 to account for proposed changes to that Rule.