



**UNITED STATES TAX COURT
WASHINGTON, D.C. 20217**

October 6, 2020

PRESS RELEASE

Chief Judge Maurice B. Foley announced today that the United States Tax Court has adopted final amendments to its Rules of Practice and Procedure.

On April 21, 2020, the Court issued proposed amendments to its Rules of Practice and Procedure in response to comments received from interested parties and to reflect the Court's commitment to simplify and modernize the Rules. The Court received comments on the proposed amendments from the American Bar Association, Section of Taxation; the Tax Clinic at the Legal Services Center of Harvard Law School; and the Office of Chief Counsel of the Internal Revenue Service. After considering the comments, the Court made certain revisions to the proposed amendments.

The appendix to this press release includes the amendments to Rules 21, 24, 260, 261, and 262 and an explanation for each amendment.

The amendments are effective October 6, 2020.

The amendments announced today are available on the Court's website at www.ustaxcourt.gov.

APPENDIX

1. Service of papers; cross references corrected

Paragraphs (b)(1) and (4) of Rule 21 are deleted and replaced with the following. [Paragraphs (a), (b)(1)(A) through (D) including the flush language, (b)(2), (b)(3), and (b)(5) remain unchanged and are omitted here.]

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 the Appendix, Form 9. 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(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 the Appendix, Form 10.

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Explanation

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

2. Appearance and Representation

Rule 24 is deleted and replaced with the following.

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 relating 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 regarding the procedure for admission to practice before the Court and Rule 201(a) regarding conduct of practice before the Court.

(4) *Limited Appearance and Special Recognition:*

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

(B) *Special Recognition:* The Court may, in its discretion, temporarily recognize an individual as the party's representative, and no 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. In addition, with the permission of the presiding Judge or Special Trial Judge, and under counsel's direct supervision, a law student 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 individual may represent an unincorporated association; and

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

See Rule 60 regarding proper parties and capacity.

(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 officer, authorized individual, or fiduciary, it must also include that person's name, mailing address, email address (if any), telephone number, and capacity in which that person is appearing.

(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 entered appearances for that party and at least one counsel will continue to serve as counsel 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 paragraph (c)(1) must file a motion to withdraw as counsel.

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

(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 the Appendix, Form 8.

(2) The substitution of counsel must state that:

(A) substituted counsel enters 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 paragraph (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 paragraph (a), and any related withdrawal of counsel must be undertaken in accordance with paragraph (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 paragraph (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.

Explanation

Rule 24 is amended stylistically to enhance its readability; 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.

Rule 24(a)(1)-(3) and (5) reorganizes portions of former paragraph (a) and lists the methods by which counsel may enter an appearance for a party, identifies the information that counsel must provide the Court, and describes the procedures applicable to counsel not admitted to practice before the Court and law student assistance. This reorganization is largely stylistic. Rule 23(a)(3) requires counsel to provide contact information, including an email address, on any paper filed with the Court. Consistent with that requirement, Rule 24(a)(2) is amended to require counsel entering an appearance in a case to provide an email address. Rule 24(a)(4) is new and recognizes the Court's practice of permitting limited appearances and specially recognizing counsel or other individuals. In May 2019, the Court adopted procedures governing limited entries of appearance and revised those procedures in May and June 2020. See Administrative Order 2020-03, issued May 29, 2020, and revised June 19, 2020, superseding Administrative Order 2019-01, issued May 10, 2019. The Court intends to maintain flexibility regarding the procedures governing limited entries of appearance and will continue to provide guidance through administrative channels. The Rule is further amended to recognize that judges have the discretion to specially recognize counsel or other individuals in appropriate circumstances. For example, a judge

may specially recognize counsel at a trial or hearing solely to receive an oral status report or for the submission of documents related to the disposition of the case.

Rule 24(b)(1) and (2) reorganizes former paragraph (b) and describes scenarios in which a party may proceed without counsel and the information that a representative of a party must provide the Court. The Rule includes a new cross reference to Rule 60, which provides a comprehensive discussion of proper parties and capacity to represent a party. This reorganization is largely stylistic, and no substantive change is intended.

Rule 24(c) is amended to provide a simplified procedure for withdrawal of counsel for a party when more than one counsel entered an appearance for that party and at least one counsel will continue to serve in that capacity. In that circumstance, and if there is no objection, counsel may file a notice of withdrawal no later than 30 days before the first day of the trial session at which the case is set for trial. The notice of withdrawal will be effective when it is entered on the docket record for the case.

Rule 24(d) is reorganized and amended to provide for substitution of counsel, if there is no objection, no later than 30 days before the first day of the trial session at which the case is set for trial. The amendment clarifies that the substitution of counsel must be filed by the substituted counsel and must include the signatures of both the current counsel and the substituted counsel. The Rule further provides procedures to be followed if substituted counsel enters an appearance within 30 days of the first day of the trial session at which the case is set for trial.

Rule 24(e) is reorganized and amended to provide that a party or counsel must promptly notify the Court of any change in the information required by the Rule, including notification of the death of counsel.

Rule 24(g)(1) and (2) reorganizes former paragraph (g). Although the amendment is largely stylistic, new paragraph (g)(2) clarifies the restrictions on counsel's representation of a party where counsel may be called as a witness in a case in which counsel has entered an appearance.

3. Proceeding to enforce overpayment determination; cross references corrected

Paragraph (e) of Rule 260 is deleted and replaced with the following.
[Paragraphs (a), (b), (c), (d), and (f) remain unchanged and are omitted here.]

RULE 260. PROCEEDING TO ENFORCE OVERPAYMENT DETERMINATION

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(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) or a substitution of counsel pursuant to Rule 24(d).

Explanation

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

4. Proceeding to redetermine interest; cross references corrected

Paragraph (e) of Rule 261 is deleted and replaced with the following.
[Paragraphs (a), (b), (c), and (d) remain unchanged and are omitted here.]

RULE 261. PROCEEDING TO REDETERMINE INTEREST

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(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) or a substitution of counsel pursuant to Rule 24(d).

Explanation

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

5. Proceeding to modify decisions in estate tax case involving section 6166 election; cross references corrected

Paragraph (e) of Rule 262 is deleted and replaced with the following.
[Paragraphs (a), (b), (c), (d), and (f) remain unchanged and are omitted here.]

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

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(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) or a substitution of counsel pursuant to Rule 24(d).

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Explanation

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