



Section of Taxation

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October 3, 2018

The Honorable Maurice Foley
Chief Judge
United States Tax Court
400 Second Street, NW
Washington, DC 20217

Re: Comments on the Tax Court Rules of Practice and Procedure Relating to the Appearance and Representation before the Court

Dear Chief Judge Foley:

Enclosed please find comments on the Tax Court Rules of Practice and Procedure Relating to the Appearance and Representation before the Court. They are submitted on behalf of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Eric Solomon
Chair, Section of Taxation

Enclosure

cc: William M. Paul, Acting Chief Counsel, Internal Revenue Service
Drita Tonuzi, Deputy Chief Counsel (Operations), Internal Revenue Service

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SECTION OF TAXATION

**COMMENTS ON THE TAX COURT RULES OF PRACTICE AND PROCEDURE
RELATING TO THE APPEARANCE AND REPRESENTATION BEFORE THE
COURT**

These comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Joshua Odintz (Chair, Court Procedure and Practice) and Christine Speidel (Chair, Pro Bono & Tax Clinics). The following individuals provided substantial assistance in drafting these Comments: Erica Brady, Jennifer Breen, Allison De Tal, Martine Gaetan, Mitchell Horowitz, Timothy Jacobs, Alexandra Minkovich, and Gregory Rhodes. These Comments were reviewed by John Colvin of the Section’s Committee on Government Submissions.

Although the members of the Section who participated in preparing these Comments have clients who would be affected by the federal tax principles addressed by these Comments, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: October 3, 2018

COMMENTS

In March of 2018, at the Tax Court Judicial Conference in Chicago, Illinois, Chief Special Trial Judge Carluzzo and Special Trial Judge Panuthos invited suggestions for better assisting unrepresented and low-income petitioners in their interactions with the Court. In August of 2018, the Court formally reiterated this invitation. In response, the Tax Section respectfully suggests that the Court consider amending its Rules of Practice and Procedure to permit counsel to enter an appearance for a limited time or purpose. We particularly encourage the Court to consider a limited appearance rule applicable to calendar call.

The Section supports legal assistance for self-represented petitioners in the United States Tax Court (the “Court” or the “Tax Court”), through calendar call programs, pro bono settlement days, and other means. Members of the American Bar Association Section of Taxation (“the Section”) are active in pro bono calendar call programs sponsored by the Section and local bar associations and registered with the Tax Court. Section members also direct low-income taxpayer clinics (“LITCs”) established under Code section 7526.¹ Many LITCs recruit and coordinate pro bono attorneys to assist low-income taxpayers.²

I. Background

Approximately 69% of all Tax Court petitioners and 91% of petitioners in small tax cases are self-represented.³ For many reasons, it is in the interests of all involved for *pro se* petitioners to receive legal counsel and representation. In general, the Court and the Internal Revenue Service must expend greater time and effort on cases involving self-represented petitioners, because these petitioners often do not understand the law or court rules and, thus, may prolong a case unnecessarily. Self-represented petitioners may not be able to make an effective legal argument or assist the Court in determining the facts and legal issues in dispute. In addition, trials are more efficient when the disputed issues are clear and the presentation of evidence is adept. Moreover, given that the government is always represented by counsel, facilitating legal representation serves the interests of justice by leveling the playing field. Finally, legal advice and representation in the Tax Court are important to ensure that taxpayers pay no more than the correct amount of tax.⁴

The ABA supports limited scope representation as a means of increasing access to legal services.⁵ The Section believes that most self-represented litigants in the Tax Court would

¹ References to the “Code” or “sections” refer to the Internal Revenue Code of 1986, as amended.

² Subsequent references in these Comments to “pro bono attorneys” include LITC attorneys as well as pro bono volunteers.

³ Remarks of Hon. Lewis R. Carluzzo, ABA Section of Taxation May Meeting, Pro Bono and Tax Clinics Committee meeting, May 12, 2018.

⁴ The right to pay no more than the correct amount of tax is included in the Taxpayer Bill of Rights. *See* I.R.C. § 7803(a)(3)(C).

⁵ ABA House of Delegates Resolution 103 (Feb. 11, 2013), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_resolution_108.pdf.

benefit from legal advice and temporary, limited-scope representation. We believe this is particularly true at calendar calls.

Tax Court Rules of Practice and Procedure Rule 24 governs appearance and representation before the Court. The rule does not currently have a provision for limited appearances.

II. Recommendation

The Section recommends that the Court adopt a rule providing for limited representation and base its rule (and accompanying forms), on the standards and forms of the District of Columbia Superior Courts.⁶ The Section favors the approach taken by the District of Columbia for three reasons. First, the rules and forms are relatively short and easy to understand. Second, the approach is administratively efficient in that it does not require the Court to adjudicate requests for entry or withdrawal of a limited appearance. Third, the approach has the requisite flexibility to meet *pro se* litigants' needs and pro bono attorneys' availability.

A. Limited Appearance at Calendar Call

Pro bono attorneys currently appear at almost every Tax Court calendar call to assist self-represented petitioners. This is a valuable practice that often results in cases settling or in petitioners obtaining representation. Even when petitioners do not obtain full representation, they may receive limited scope legal advice about their case. Unfortunately, in the absence of a rule permitting a limited scope appearance, confusion can result, limiting the effectiveness of pro bono assistance at calendar call.

At some calendar calls, judges have requested that pro bono attorneys speak on the record for a self-represented petitioner. Usually this occurs because the petitioner is unable to articulate his or her position with sufficient clarity for the Court to determine what issues are being disputed by the parties, the required trial time, or whether settlement is possible. Attorneys are very uncomfortable speaking on the record for a petitioner who is being assisted solely as part of a calendar call program, because appearing as counsel of record on a case has serious ethical implications. Consistent with ABA Model Rule 6.5, pro bono attorneys often do not conduct conflict checks at calendar call. We believe that attorneys who participate in pro bono calendar

⁶ We reviewed the limited representation rules of 12 states and the District of Columbia. Links to all states' limited representation rules plus those of the District of Columbia are collected here:

https://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html.

Excerpts from these rules with hyperlinks to the source documents are attached to these comments as Addendum A, State Survey: Pro Se Litigants and Limited Scope Representation. The ABA Standing Committee on Legal Aid and Indigent Defendants collects resources on limited scope representation at the following website: https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/limited_scope_unbundling.html. In addition, the ABA Standing Committee on the Delivery of Legal Services hosts an online Unbundling Resource Center, at https://www.americanbar.org/groups/delivery_legal_services/resources.html. One resource of note, listed on both webpages, is an ABA White Paper from August of 2014, *An Analysis of Rules That Enable Lawyers to Serve Self-Represented Litigants*. The White Paper addresses issues related to limited representation beyond those discussed in these Comments.

call programs would greatly appreciate a limited appearance rule explicitly permitting them to speak on the record for a petitioner at calendar call without having to enter an appearance for the entire matter, as such a rule would clarify the attorney's obligations to the client and the Court.

B. Limited Appearance for Other Purposes

We believe a broader limited appearance rule, beyond one specifically designed for calendar call, would also benefit the parties and the Court. In particular, we anticipate that a pro bono attorney who initially provided assistance at calendar call would be more likely to go forward and assist a petitioner in presenting evidence or making a legal argument at his or her trial if doing so did not require the attorney to brief the case or handle other matters that might arise after trial.

In this regard, we note that lack of a limited appearance rule has presented difficulties in some cities with volunteer recruitment to assist self-represented petitioners in their Tax Court trials. We believe a Court rule on limited appearance would increase the number of attorneys who volunteer to assist self-represented petitioners in the Tax Court. Although our members generally are eager to assist low-income and self-represented petitioners on a pro bono basis, they report some difficulty recruiting pro bono attorneys for representation that requires entry of an appearance with the Court.

We anticipate that a flexible limited appearance rule could also be used in the following scenarios, among others:

- To represent married petitioners jointly as to a proposed deficiency, but not as to any separation of liability claim under section 6015;⁷
- To represent a petitioner on a penalty issue, but not on the proposed deficiency;
- To assist a petitioner with the presentation of evidence at trial, but not make legal argument or otherwise represent the petitioner; and
- To represent a petitioner in a discovery dispute.

III. Draft Rule 24A

To address these issues and concerns, we have drafted a proposal and attached the proposed rule as Addendum B is a draft rule for consideration by the Court.

The draft rule incorporates the restrictions on limited representation from ABA Model Rule 1.2(c). In addition to those restrictions, we have recommended that the Court require the client's consent to be confirmed in writing. The represented party and counsel must be in agreement on the scope of the representation in order to comply with counsel's legal and ethical obligations.

IV. Entry and Completion Forms

Attached to these Comments as Addendum C and Addendum D are the following draft forms: Entry of Limited Appearance; and Notice of Completion. These are modified versions of

⁷ Whether this is permissible under ABA Model Rule 1.7 may depend on the facts of the particular case.

the forms used by the Superior Court of the District of Columbia.⁸ The attached drafts reflect the following recommended modifications to the District of Columbia forms:

- A. Due to the unique nature of Tax Court litigation in which one party is always represented by the Office of Chief Counsel, we believe it unnecessary to include summaries of the service rules⁹, with one exception noted below. In the majority of cases, the Commissioner of the Service (the “Commissioner”) will be the party notifying a person represented by limited appearance counsel. The Commissioner can be expected to notify the appropriate persons under the Court’s rules.
- B. We feel the certification language in the District of Columbia forms is not necessary, as it is covered by Rule 33.
- C. We recommend a shortened version of the District of Columbia language reminding filers that counsel entering or terminating a limited appearance must serve his or her client with the paper. This is an important protection for petitioners.

V. Confidentiality and Communication

First, the Commissioner’s attorneys have an obligation under Code section 6103 to keep tax return information confidential. An attorney representing a petitioner pursuant to an entry of limited appearance would be counsel of record in the Tax Court for the matters or time periods specified. Therefore, he or she should be able to have access to any otherwise confidential information that is within the scope of the limited representation.

Second, under ABA Model Rule 4.2 attorneys may not ethically communicate with a represented party. However, Comment 4 clarifies that “this Rule does not prohibit communication with a represented person... concerning matters outside the representation.” Accordingly, Chief Counsel attorneys (or attorneys representing other parties) could continue to communicate directly with a person represented by a limited scope attorney about matters outside the scope of the representation.

At this time, the Section does not recommend any specialized rules or procedures addressing confidentiality or communication in limited representation cases. If there is any doubt as to the scope of an attorney’s representation, or the parties and counsel should confer to confirm the scope. Prudent counsel will memorialize the substance of that conference in writing.

⁸ The relevant District of Columbia Administrative Order and Forms are attached as Appendix E.

⁹ See generally Appendix E. For example, the District of Columbia Notice of Limited Appearance Form includes the following paragraph: “Notices and documents concerning the date, time period, activity, or subject matter described above must be served on me and my client. All other notices and documents must be served only on my client and/or any counsel who has entered an appearance on my client’s behalf.” We do not believe such language is necessary in the Tax Court.

Addendum A

State Survey: Pro Se Litigants and Limited Scope Representation

<p>Alabama</p> <p>Rule 87</p>	<p>(a) Permitted. In accordance with Rule 1.2(c) of the Alabama Rules of Professional Conduct, an attorney may provide limited-scope representation to a person involved in a court proceeding.</p> <p>(b) Notice. If specifically so stated in a notice of limited-scope representation filed and served prior to or simultaneously with the initiation of a proceeding, an attorney's role may be limited as set forth in the notice.</p> <p>(c) Termination. The attorney's role terminates without the necessity of leave of court upon the attorney's filing a notice of completion of limited-scope representation with a certification of service on the client.</p> <p>(d) Service. Service on an attorney providing limited-scope representation is required only for matters within the scope of the representation as set forth in the notice.</p>	<p>See doc here.</p>
<p>California</p> <p>Rule 5.425</p> <p>Limited Scope Representation</p>	<p>(d) Noticed limited scope representation</p> <p>(1) A party and an attorney must provide the required notice of their agreement for limited scope representation by serving other parties and filing with the court a <i>Notice of Limited Scope Representation</i> (form FL-950).</p> <p>(2) After the notice in (1) is received and until a <i>Substitution of Attorney--Civil</i> (form MC-050), or a <i>Notice of Completion of Limited Scope Representation</i> (form FL-955) with the "Final" box checked, or an order to be relieved as attorney is filed and served:</p> <p style="padding-left: 20px;">(A) The attorney must be served only with documents that relate to the issues identified in the <i>Notice of Limited Scope Representation</i> (form FL-950); and</p> <p style="padding-left: 20px;">(B) Documents that relate to all other issues outside the scope of the attorney's representation must be served directly on the party or the attorney representing the party on those issues.</p> <p>(3) Electronic service of notices and documents described in this rule is permitted if the client previously agreed in writing to accept service of documents electronically from the attorney.</p> <p>(4) Before being relieved as counsel, the limited scope attorney must file and serve the order after hearing or judgment following the hearing or trial at which he or she provided representation unless:</p> <p style="padding-left: 20px;">(A) Otherwise directed by the court; or</p> <p style="padding-left: 20px;">(B) The party agreed in the <i>Notice of Limited Scope Representation</i> (form FL-950) that completion of the order after hearing is not within the scope of the attorney's representation.</p> <p>(e) Procedures to be relieved as counsel on completion of limited scope representation if client has not signed a substitution of attorney An attorney who has completed the tasks specified in the <i>Notice of Limited Scope Representation</i> (form FL-950) may use the following procedures in this rule to request that he or she be relieved as attorney if the client has not signed a <i>Substitution of Attorney--Civil</i> (form MC-050):</p> <p>(1) Notice of completion of limited scope representation The limited scope attorney must serve the client with the following documents:</p> <p style="padding-left: 20px;">(A) A <i>Notice of Completion of Limited Scope Representation</i> (form FL-955) with the "Proposed" box marked and the deadline for the client to file the objection completed by the attorney;</p>	<p>See doc here.</p>

	<p>(B) Information for Client About Notice of Completion of Limited Scope Representation (form FL-955-INFO); and</p> <p>(C) A blank <i>Objection to Proposed Notice of Completion of Limited Scope Representation</i> (form FL-956).</p> <p>(2) No objection If the client does not file and serve an <i>Objection to Proposed Notice of Completion of Limited Scope Representation</i> (form FL-956) within 10 calendar days from the date that the <i>Notice of Completion of Limited Scope Representation</i> (form FL-955) was served, the limited scope attorney:</p> <p>(A) Must serve the client and the other parties or, if represented, their attorneys, with a <i>Notice of Completion of Limited Scope Representation</i> (form FL-955) with the "Final" box marked;</p> <p>(B) Must file the final <i>Notice of Completion of Limited Scope Representation</i> (form FL-955) with the court, and attach the proofs of service of both the "Proposed" and "Final" notices of completion;</p> <p>(C) May not be charged a fee to file the final notice of completion, even if the attorney has not previously made an appearance in the case; and</p> <p>(D) Is deemed to be relieved as attorney on the date that the final notice of completion is served on the client.</p> <p>(3) Objection If the client files the <i>Objection to Proposed Notice of Completion of Limited Scope Representation</i> (form FL-956) within 10 calendar days from the date that the proposed notice of completion was served, the following procedures apply:</p> <p>(A) The clerk must set a hearing date on the <i>Objection to Proposed Notice of Completion of Limited Scope Representation</i> (form FL-956) to be conducted no later than 25 court days from the date the objection is filed.</p> <p>(B) The court may charge a motion fee to file the objection and schedule the hearing.</p> <p>(C) The objection--including the date, time, and location of the hearing--must be served on the limited scope attorney and all other parties in the case (or on their attorneys, if they are represented). Unless the court orders a different time for service, the objection must be served by the deadline specified in <i>Information for Client About Notice of Completion of Limited Scope Representation</i> (form FL-955-INFO).</p> <p>(D) If the attorney wishes, he or she may file and serve a <i>Response to Objection to Proposed Notice of Completion of Limited Scope Representation</i> (form FL-957). Unless otherwise directed by the court, any response should be filed with the court and served on the client and other parties, or their attorneys, at least nine court days before the hearing.</p> <p>(E) Unless otherwise directed by the court, the attorney must prepare the <i>Order on Completion of Limited Scope Representation</i> (form FL-958) and obtain the judge's signature.</p> <p>(F) The attorney is responsible for filing and serving the order on the client and other parties after the hearing, unless the court directs otherwise.</p> <p>(G) If the court finds that the attorney has completed the agreed-upon work, the representation is concluded on the date determined by the court in the <i>Order on Completion of Limited Scope Representation</i> (form FL-958).</p> <p>(Subd (e) amended effective January 1, 2018; previously amended and renumbered effective September 1, 2017.)</p> <p>(f) Nondisclosure of attorney assistance in preparation of court documents</p>	
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<p>Rules of Civil Procedure</p> <p>C.R.C.P 121</p>	<p>or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.</p>	
<p>Superior Court of the District of Columbia</p> <p>Administrative Order 14-10</p>	<ul style="list-style-type: none"> - Attorney may enter a limited appearance when representing paid or pro bono clients in branches of the DC Superior Court, including the Tax Division. - Attorney may enter limited appearance in court proceedings including, but not limited to, discovery, motions practice, or hearings. - Limited scope representation is not permitted in a jury trial. - Attorney's appearance may be limited by date, time period, activity, or subject matter when stated in a Notice of Limited Appearance filed and served prior to <u>or simultaneous with</u> proceedings. - If appearance is limited <i>by date or time period</i>, appearance terminates without the necessity of leave of court. If appearance is limited <i>by activity or subject matter</i>, then it will terminate by filing a Notice of Completion. -Attorney may extend limited appearance by filing and serving new notice of limited appearance. 	<p>See original here</p>
<p>Kansas</p> <p>Rule 83.5.8</p>	<p>(a) In General. A lawyer may limit the scope of representation in civil cases if the limitation is reasonable under the circumstances and the client gives informed consent in writing.</p> <p>(b) Procedures. A lawyer who provides limited representation must comply with Kansas Supreme Court Rule 115A, as later amended or modified, with two exceptions. First, the lawyer must use the federal forms rather than the Kansas State Court forms. Second, Rule 115A(c) does not apply in the District of Kansas. Any attorney preparing a pleading, motion or other paper for a specific case must enter a limited appearance and sign the document. The Bankruptcy Court may have additional Local Rules that govern its limited scope practice.</p> <p>(c) Participation. The United States District Court for the District of Kansas allows any attorney registered as active to practice before this court to offer limited scope representation.</p>	<p>See doc here.</p>
<p>Massachusetts</p> <p>Housing Court</p>	<ul style="list-style-type: none"> - An attorney may represent a litigant on a limited basis in connection with any civil case but may not represent a litigant in a criminal case. - If the attorney drafts documents for a litigant to file with court, the attorney must write that the document was prepared with the assistance of counsel. 	<p>See document here.</p>

	<ul style="list-style-type: none"> - For attorney appearance in court, the attorney must file a Notice of Limited Appearance with the court describing the specific issue or event in which the attorney is representing the litigant. - After completion of the representation, the attorney must file a Notice of Withdrawal of Limited Appearance. 	
Massachusetts Land Court	<ul style="list-style-type: none"> - Much the same to MA Housing Court. - Difference: requires attorneys attend a mandatory training before they provide LAR. - In the event the client requires extended representation, the attorney must file another Notice of Limited Appearance describing items within the extended representation and then file a Notice of Withdrawal of Limited Appearance upon completion of the extended representation. If the extension of representation is tot represent for the remainder of the case, the attorney must enter a filing of a general appearance, not a limited one. 	See source here Trial Court of Massachusetts: Limited Assistance Representation Training Manual
Montana Prof. Conduct R. Order	<p>Rules 1.2, 4.2, and 4.3 of the Montana Rules of Professional Conduct are amended by the addition of the language highlighted and underlined below:</p> <p>Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer [existing subsections (a) and (b)]</p> <p>(c) A lawyer may limit scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.</p> <p style="padding-left: 20px;">(1) The client's informed consent must be confirmed in writing unless:</p> <ul style="list-style-type: none"> (i) the representation of the client consists solely of telephone consultation; (ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or (iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order. <p style="padding-left: 20px;">(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:</p> <ul style="list-style-type: none"> (i) the representation is limited to the attorney and the services described in writing; and (ii) the attorney does not represent the client generally or in matters other than those identified in the writing. <p>[existing subsection (d)]</p> <p>Rule 4.2 -- Communication with Person Represented by Counsel</p> <p>(a) [existing rule]</p> <p>(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to</p>	

	<p>communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.</p> <p>Rule 4.3 -- Dealing with Unrepresented Person (a) [existing rule] (b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.</p>	
<p>Nebraska</p> <p>9th Jud. Cir. Rule 19</p> <p>Neb. Ct. R. of Prof. Cond. § 3-501.2</p>	<p>- Lawyer shall file "Limited Appearance."</p> <p>- The "Limited Appearance" shall contain (1) a written acceptance by the client setting forth the client's understanding of the scope, nature, and acceptance of the representation; and (2) a statement that all pleadings, motions, and notices should be sent to the lawyer entering the "Limited Appearance." When the representation is complete, the lawyer shall file within 10 days a "Certificate of Completion of Limited Representation" with the court. The certificate shall contain a statement that all future pleadings, motions, and notices should be sent directly to the pro se litigant. An order of the court allowing the lawyer to withdraw is not required.</p> <p>-----</p> <p>---</p> <p>(c) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "Prepared By" and the name, business address, and bar number of the lawyer preparing the same. Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case. Any filing prepared under this rule shall be signed by the litigant designated as "pro se," but shall not be signed by the lawyer preparing the filing.</p> <p>(d) If, after consultation, the client consents in writing, a lawyer may enter a "Limited Appearance" on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer's limited representation.</p> <p>(e) Upon completion of the "Limited Representation," the lawyer shall within 10 days file a "Certificate of Completion of Limited Representation" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer's withdrawal of appearance which shall not require court approval.</p>	<p>See doc here.</p>

<p>New Hampshire</p> <p>Rule 83.7 Limited Representation by Counsel</p>	<p>- Attorney must submit motion for limited appearance where he/she declares the scope of the appearance.</p> <p>-Once the specified scope of representation is completed, attorney files and serves a Notice of Completion of Limited Representation.</p>	
<p>Ohio</p> <p>Rules of Civil Procedure</p>	<p>Proposed amendments to limited representation law:</p> <p><i>Civ.R. 3(B)--Allows "Limited Scope of Appearance" for Attorneys</i> The Commission recommends amendments to <u>Civ.R. 3(B)</u> which allows an attorney to enter a limited appearance in a case. The amendment requires the attorney to specifically note the scope of their representation in the notice of appearance. Additionally, if the attorney files a notice of their limited appearance being satisfied - and no party objects within ten days - the attorney may end their involvement in the case without leave of court. This proposed amendment comes from recommendations of the Supreme Court of Ohio's Task Force on Access to Justice.</p> <p><i>Civ.R. 4.4--Reorganization of Rule for Increased Clarity</i> The Commission recommends the amendment of <u>Civ.R. 4.4</u>, which reorganizes the rule for better clarity as to who can use which particular methods of service. Most prominently, the rule allows applicants for civil protection orders to use the "post and publish" method of service without first showing indigency. The amendments also allow that service by publication can be sought by parties other than plaintiffs and may be used for filings other than complaints in certain circumstances.</p> <p><i>Civ.R. 5--Serving an Attorney on Limited Appearance</i> The Commission recommends amendments to <u>Civ.R. 5</u> to work in conjunction with the proposed amendment to <u>Civ.R. 3</u>. This amendment makes clear that a party may be served through their attorney, unless their attorney had filed a notice of limited appearance and the scope of that appearance has ended.</p> <p><i>Civ.R. 11--Allowing Attorney to Assist in Drafting Filing without Signature</i> The Commission recommends amendments to <u>Civ.R. 11</u> so as to allow an attorney to assist a party in preparing or drafting a filing, but without having to sign the filing as required by the existing rule. Any filing prepared with an attorney's assistance must indicate "prepared with the assistance of counsel" on the document, and the court may order that the party identify the attorney if the court has any concerns about the adequacy of the assistance provided.</p> <p><i>Civ.R. 50 --Time to File Post-Trial Motions or Motions for JNOV</i> The Commission recommends amendments to <u>Civ.R. 50</u> so as to clarify the time a party has to file a post-trial motion. Under the current rule, a post-trial motion must be filed within 28 days of the judgment being entered. In a scenario where the party never actually receives notice of the judgment, however, this can lead to a harsh result. As such, this amendment makes clear that the 28-day timeframe to file a motion cannot expire if a party is never actually served with notice of the judgment.</p> <p><i>Civ.R. 59 --Time to File Motions for New Trials and Other Motions</i></p>	

	<p>The Commission recommends amendments to <u>Civ.R. 59</u> so as to clarify the time a party has to file a post-trial motion. This amendment has the same effect as the amendment to <u>Civ.R. 50</u>. The rule was also amended to make clear that certain other post-trial motions - such as motions for additur, attorney's fees, or prejudgment interest - also must be filed within these time frames.</p> <p><i>Civ.R. 75 --Modernization of Language</i> The Commission recommends amendments to <u>Civ.R. 75</u> so as to modernize terminology. The term "pendente lite" is replaced with "temporary."</p>	
<p>Oklahoma Rule 33</p>	<p>A lawyer providing limited scope representation under Rule 1.2 (c) of the Oklahoma Rules of Professional Conduct may draft pleadings or other documents for a pro se litigant to file with or present to a district court without the lawyer entering an appearance in the matter. A lawyer shall disclose such assistance by indicating their name, address, bar number, telephone number, other contact information and, optionally, a signature on said pleading or other document with the phrase "No appearance is entered as counsel of record."</p>	
<p>Oregon Rule 5.170</p>	<p>(1) <i>Applicability</i> This rule applies to limited scope representation in civil cases subject to this chapter, when an attorney intends to appear in court on behalf of a party.</p> <p>(2) <i>Notice of Limited Scope Representation</i> When an attorney intends to appear in court on behalf of a party, the attorney shall file and serve, as soon as practicable, a Notice of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website (http://courts.oregon.gov/OJD/pages/index.aspx).</p> <p>(3) <i>Termination of Limited Scope Representation</i> When the attorney has completed all services within the scope of the Notice of Limited Scope Representation, the attorney shall file and serve a Notice of Termination of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website (http://courts.oregon.gov/OJD/pages/index.aspx), in accordance with <u>UTCR 3.140</u>.</p> <p>(4) <i>Service of Documents</i> After an attorney files a Notice of Limited Scope Representation in accordance with this section, service of all documents shall be made upon the attorney and the party represented on a limited scope basis. The service requirement terminates as to the attorney when a Notice of Termination of Limited Scope Representation is filed and served, or when an attorney withdraws.</p>	
<p>Supreme Court of Vermont VT. 2-6-2006</p>	<p>- Attorney may enter a limited representation only for the following purposes:</p> <ul style="list-style-type: none"> ➤ filing a complaint/other pleading ➤ filing/arguing one/more specific motion(s) ➤ conducting one/more specific discovery procedures ➤ participating in a pretrial conference/ an alternative dispute resolution proceeding ➤ acting as counsel for a particular hearing/trial 	<p>See original here</p>

	<ul style="list-style-type: none">➤ taking and perfecting an appeal➤ with leave of court, for a specific issue or a specific portion of a trial or hearing <p>-Written notice of limited appearance required; purpose and scope must be specified.</p> <p>- Attorney may be granted leave to withdraw once purpose of the appearance is complete. If he/she seeks to withdraw before that purpose is completed, must submit a notice.</p>	
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ADDENDUM B

PROPOSED TAX COURT RULE 24A

RULE 24A. LIMITED APPEARANCES

(a) Appearance at Calendar Call: (1) *General:* With the Court's approval, counsel may limit the scope of an appearance to representation at calendar call if (A) the limitation is reasonable under the circumstances, (B) the limitation does not preclude competent representation or violate other Rules, and (C) the client gives informed consent in writing or in a statement on the record before the court.

(2) *Notice:* An entry of appearance may be limited to a calendar call if specifically stated in an Entry of Limited Appearance filed with the Court prior to or through statements in support of such appearance on the record before the Court at the calendar call.

(3) *Termination:* Counsel's appearance terminates without leave of court or further action upon the conclusion of said calendar call.

(b) Limited Appearance for Other Purposes: (1) *General:* Counsel may enter a limited appearance if (A) the limitation is reasonable under the circumstances, (B) the limitation does not preclude competent representation or violate other Rules, and (C) the client gives informed consent in writing.

(2) *Notice:* Appearance may be limited by date, time period, activity, or subject matter if specifically stated in an Entry of Limited Appearance filed with the Court prior to or at relevant proceedings.

(3) *Termination:* Counsel's appearance terminates without leave of court: (A) if the Notice of Limited Appearance specifically states the scope of the appearance by date or time period; or (B) upon filing a Notice of Completion with the Court and service of the same on all parties to the case.

(4) *Service:* (A) Papers concerning the date, time period, activity, or subject matter described in the Entry of Limited Appearance must be served on both the represented person and counsel; (B) Service on counsel for matters outside the scope of the limited appearance does not extend the scope of counsel's representation; and (C) Counsel filing an Entry of Limited Appearance or a Notice of Completion must serve such paper upon the person represented.

(5) *Extension:* Counsel may extend a limited appearance by filing and serving a new Notice of Limited Appearance or an Entry of Appearance prior or simultaneous with the proceeding(s) or calendar call for which counsel appears.

(6) *Privileges:* Nothing in a limited appearance representation allowed under this rule will deprive the client of the protections of the attorney-client privilege, the work product

doctrine, or the 26 U.S.C. section 7525 privilege, where such protections would otherwise be available in a full representation of the client.

ADDENDUM C

UNITED STATES TAX COURT

_____))
Petitioner,))
v.) Docket No.
COMMISSIONER OF INTERNAL))
REVENUE,))
Respondent))

ENTRY OF LIMITED APPEARANCE

The undersigned, being duly admitted to practice before the United States Tax Court, hereby enters a limited appearance for the petitioner in the above-entitled case. This appearance is limited to:

- date: _____
- time period: _____
- activity: _____
- subject matter: _____

and will terminate without necessity of leave of court. If the appearance is limited by activity or subject matter, it will terminate upon the undersigned filing a Notice of Completion. If the appearance is limited by date or time period, it will terminate without filing a Notice of Completion.

I have informed my client that my appearance is limited and does not extend beyond what is specified above unless a new Notice of Appearance is filed. My client has given informed written consent to this arrangement.

I served a copy of this Entry of Limited Appearance on all parties or their counsel and on my client as set forth in the attached Certificate of Service.

Dated: _____

(Signature)

(Typed name)

(Office address)

(City, state, ZIP code)

(Telephone No. (include area code))

(Tax Court Bar Number)

ADDENDUM D

UNITED STATES TAX COURT

_____)	
Petitioner,)	
)	
v.)	Docket No.
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent)	

NOTICE OF COMPLETION

As of the _____ day of _____, 20____, the undersigned counsel completed the (select one):

- activity
- subject matter

specified in the undersigned counsel's Entry of Limited Appearance.

The filing of this Notice hereby terminates my appearance without necessity of leave of court. I have informed my client that my appearance was limited and is now terminated.

I served a copy of this Notice of Completion on all parties or their counsel and on my client as set forth in the attached Certificate of Service.

Dated: _____

(Signature)

(Typed name)

(Office address)

(City, state, ZIP code)

(Telephone No. (include area code))

(Tax Court Bar Number)

Addendum E

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA ADMINISTRATIVE ORDER 14-10

Limited Appearances in the Civil Division, Probate Division, Tax Division, Family Court, and Domestic Violence Unit – Supersedes Administrative Order Nos. 08-02, 11-07 and 12-08

WHEREAS, the Superior Court of the District of Columbia has issued several administrative orders permitting lawyers to enter limited appearances when representing *pro bono* clients for a specific duration or task in the Landlord and Tenant Branch (Administrative Order No. 08-02), Paternity and Child Support Branch (Administrative Order No. 11-07), and the Small Claims and Conciliation Branch and the Civil Actions Branch Collections Calendar (Administrative Order No. 12-08); and

WHEREAS, a significant number of litigants do not have legal counsel; and

WHEREAS, some litigants need legal advice and/or temporary, limited-scope representation in these cases; and

WHEREAS, limited appearances do not violate the D.C. Rules of Professional Conduct as long as the appearances are reasonable under the circumstances; and

WHEREAS, in order to provide eligible, unrepresented, low-income litigants in the Civil Division, Probate Division, Tax Division, Family Court, and Domestic Violence Unit with the opportunity to obtain free legal counsel immediately, it is appropriate to make temporary, limited-scope representation available in these cases;

NOW, THEREFORE, it is by this Court,

ORDERED, that to the extent not inconsistent with the Rules of this Court, an attorney may enter a limited appearance when representing paid or *pro bono* clients in the following divisions and branches of the Superior Court of the District of Columbia: Civil Division, Probate Division, Tax Division, Family Court, and Domestic Violence Unit; and it is further

ORDERED, that in accordance with Rule 1.2(c) of the District of Columbia Rules of Professional Conduct, an attorney may enter a limited appearance in a court proceeding including, but not limited to, discovery, motions practice, or hearings; and it is further

ORDERED, that limited scope representation is not permitted in a jury trial. Attorneys who accept representation in a matter that continues to a jury trial must withdraw before *voir dire* begins or continue representation through the return of the verdict; and it is further

ORDERED, that an attorney's appearance may be limited by date, time period, activity, or subject matter when specifically stated in a Notice of Limited Appearance filed and served prior to or simultaneous with the proceeding(s) for which the attorney appears; and it is further

ORDERED, that the attorney's appearance terminates without the necessity of leave of court (1) if the notice of limited appearance specifically states the scope of the appearance by date or time period; or (2) upon the attorney filing a Notice of Completion, which must be served on each of the parties, including the attorney's client; and it is further

ORDERED, that (1) service on an attorney who has entered a limited appearance is required only for matters within the scope of the representation as stated in the notice; (2) any such service also must be made on the party; and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney's representation; and it is further

ORDERED, that an attorney may extend a limited appearance only by filing and serving a new notice of limited appearance or a notice of general appearance prior to or simultaneous with the proceeding(s) for which the attorney appears; and it is further

ORDERED, that this Administrative Order shall take effect on the date of this Order and supersedes Administrative Order 08-02: Temporary Appearances for L&T Court – Pilot Project, Administrative Order 11-07: Temporary Appearances for the Paternity and Child Support Branch, and Administrative Order 12-08: Temporary Appearances in the Small Claims and Conciliation Branch and the Civil Actions Branch Collections Calendar – Pilot Project.

SO ORDERED.

BY THE COURT

DATE: June 16, 2014

Lee F. Satterfield
Chief Judge

Copies to:

Judges

Senior Judges

Magistrate Judges

Executive Officer

Clerk of the Court

Division Directors

Library

Daily Washington Law Report

D.C. Bar Webmaster

Jessica Rosenbaum, D.C. Access to Justice Commission

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

- CIVIL DIVISION**
- DOMESTIC VIOLENCE UNIT**
- FAMILY COURT**
- PROBATE DIVISION**
- TAX DIVISION**

_____,
Plaintiff/Petitioner

v.

Case No. _____

_____,
Defendant/Respondent

NOTICE OF LIMITED APPEARANCE

THE CLERK OF THE COURT will please note that I am entering an appearance limited to (select one and specify):

- date: _____,
- time period: _____,
- activity: _____,
- subject matter: _____,

which will terminate without necessity of leave of court. If the appearance is limited by activity or subject matter, it will terminate upon my filing a Notice of Completion. If the appearance is limited by date or time period, it will terminate without filing a Notice of Completion.

I have informed my client that my appearance is limited and does not extend beyond what is specified above without mutual and informed consent and unless a new Notice of Limited Appearance is filed.

Notices and documents concerning the date, time period, activity, or subject matter described above must be served on me and my client. All other notices and documents must be served only on my client and/or any counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the _____ day of _____, 20____, I served a copy of this Notice of Limited Appearance on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

Signature

Street Address

Print Name and Bar Number

City, State, ZIP

Phone Number

Email Address

Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

- CIVIL DIVISION**
- DOMESTIC VIOLENCE UNIT**
- FAMILY COURT**
- PROBATE DIVISION**
- TAX DIVISION**

_____,
Plaintiff/Petitioner

v.

Case No. _____

_____,
Defendant/Respondent

NOTICE OF COMPLETION

THE CLERK OF THE COURT will please note that as of the _____ day of _____, 20___, I completed the (select one):

- activity
- subject matter

specified in my Notice of Limited Appearance. The filing of this Notice hereby terminates my appearance without necessity of leave of court. I informed my client that my appearance was temporary and will terminate upon the filing of this Notice of Completion.

Any new notices or documents pertaining to this case must be served only on my client and/or any counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the _____ day of _____, 20___, I served a copy of this Notice of Completion on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

Signature

Street Address

Print Name and Bar Number

City, State, ZIP

Phone Number

Email Address

Date