

CC-2020-001

October 4, 2019

Subject: Communication with Representatives
Who Have Filed a Limited Entry of
Appearance
Cancel Date: Upon incorporation into
CCDM

Purpose

Through Tax Court Administrative Order No. 2019-01, the Tax Court has prescribed procedures for taxpayer representatives to file a limited entry of appearance. The text of this Administrative Order can be found on the Tax Court's website at https://www.ustaxcourt.gov/rules/limited_eoa/Admin_Order_No_2019-01.pdf.

This Notice informs Chief Counsel attorneys of the new procedure, effective September 9, 2019, and reminds Chief Counsel attorneys of their ethical responsibilities with respect to representatives who file a limited entry of appearance. For guidance on communicating with petitioners who are represented by counsel in some but not all aspects of a docketed case, see Chief Counsel Notice CC-2017-006, Communication with Limited Scope Representatives in Docketed Tax Court Cases (April 18, 2017). For guidance on communicating with pro se petitioners and representatives who have not entered an appearance, see Chief Counsel Notice CC-2014-003, Communications With Pro Se Petitioners and Form 2848 Representatives in Tax Court Litigation (May 15, 2014).

Background and Discussion

The Tax Court Rules of Practice and Procedure require that all practitioners before the court, including Chief Counsel attorneys, carry on their practice in accordance with the letter and the spirit of the ABA Model Rules of Professional Conduct. T.C. Rule 201(a). Limited representation is permitted by ABA Model Rule 1.2(c). Limited representation constitutes an attorney-client relationship in which, by advance agreement of counsel and petitioner, the legal services provided by petitioner's counsel are limited in scope and duration to less than full representation.

In accordance with Tax Court Rule of Practice and Procedure 201(a), Tax Court Administrative Order No. 2019-01, and ABA Model Rule 1.2(c), representatives admitted to practice and in good standing with the Tax Court may file a limited appearance to a date or dates during a scheduled Trial Session. The representative must file with the Tax Court a separate limited entry of appearance in each case. The

Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	Electronic Reading Room
Filename:	CC-2020-001	File copy in: CC:FM:PFD

limited entry of appearance form must (1) be executed by the practitioner, (2) contain an executed acknowledgement by the petitioner(s), and (3) be served on all parties or their counsel.

Under Tax Court Administrative Order No. 2019-01, the limited entry of appearance form may not be filed earlier than the start of a scheduled trial session. A representative's limited entry of appearance will automatically terminate at the earlier of (1) the adjournment of the trial session, or (2) the end of the date(s) specified in the limited entry of appearance.

If a petitioner's representative has filed a limited entry of appearance, Chief Counsel attorneys should communicate with the representative in accordance with Tax Court Rule of Practice and Procedure 201(a), and ABA Model Rule 4.2 which provides that "in representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

Tax Court Administrative Order No 2019-01 is a court order that falls within the exception to ABA Model Rule 4.2 because it requires service of notices or documents on petitioner(s) when a representative has filed a limited entry of appearance. The court order states that service of notices or documents on a representative who has filed a limited entry of appearance (1) is required only during the time period set forth in the limited entry of appearance; (2) must also be made on the petitioner(s); and (3) does not extend the time of the practitioner's appearance if made outside the time period set forth in the limited entry of appearance.

If possible, Chief Counsel attorneys should obtain, in addition to the signature of the representative acting under the authority of a limited entry of appearance, the signatures of all petitioners on any settlement document resulting in the resolution of a case, or portions thereof. This is a protective measure to prevent a subsequent collateral attack on the settlement wherein a petitioner may allege that the representative acted outside the representative's authority in settling all or part of the case. If the limited entry of appearance expires before the settlement is signed by both the representative and respondent's counsel, Chief Counsel attorneys must obtain the signatures of petitioners.

If petitioner's representative is a limited scope representative under the provisions of Tax Court Administrative Order No. 2019-01 or otherwise, such as by submitting a Form 2848, Power of Attorney and Declaration of Representative, without entering an appearance, Chief Counsel attorneys should follow the guidance set forth in Chief Counsel Notice CC-2017-006. If a petitioner's representative has not filed a limited entry of appearance, a representative's limited entry of appearance has terminated, and the representative is not otherwise providing limited scope representation, Chief Counsel attorneys should follow the guidance set forth in Chief Counsel Notice CC-2014-003.

