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Transparency of Court Proceedings

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This panel provides six questions for discussion. In **Part I** there are three questions relating to transparency as it applies to the assignment of cases to a Judge, the deliberative process and the availability of proceedings to the public. In **Part II** the panel considers transparency as it applies the personal/financial information, extra judicial activities and complaints and disciplinary proceeding related to Judges.

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PART I

Question 1: How does the Court assign cases and to what extent is this process available to the public?

Answer:

(1) The System of Assignment

The United States Tax Court sits in 74 cities throughout the United States. All petitions are filed with the Court in Washington, D.C. where the Judges are based. When a petition is filed, the taxpayer, petitioner, requests a particular place of trial. The Clerk of the Court with her staff, using a computer system, inputs that case into the inventory for that city.

The Court has three terms of Trial Sessions: Fall, Winter and Spring. The Chief Judge of the Tax Court, who is elected bi-annually by the other active presidentially appointed Judges, has the responsibility to assign cases and sessions to the Judges. Approximately seven months prior to the commencement of a particular term, the Clerk will electronically send to the Chief Judge a list of cases for various cities. The Chief Judge transmits this list to the Judges and the Judges then request cities that they would like to travel to for the term. The Chief Judge then creates a list of cities of assignment for Judges. For example, Judge A might be assigned a one week session in each of New York City, Chicago and Los Angeles for the Winter 2019 Term. Those sessions will be populated by cases where petitioners have requested that particular city for place of trial.

The second way cases get assigned to Judges is what we call “Specials”. The Clerk staff creates a list of specific cases which need special treatment. Sometimes the parties have notified the Court that a particular case needs special assignment because a lengthy trial is required which will not fit within the normal trial week. Sometimes the Clerk staff notes special circumstances of a case (usually a large corporate case) that requires Judge management early on. In these situations the Chief Judge will create a list and look to the Judges for such special assignments.

The Chief Judge will generally look to caseload of a particular Judge so as not to overload any Judges. A question asked is: does that Judge have a backlog of cases requiring opinion and decision? One of the important tasks of any Chief Judge is to encourage the timely disposition of cases after trial or hearing. The Court does not assign particular kinds of cases to specific Judges and the Judges do not specialize in subject matter issues. This is consistent with the Court’s issuance of opinions; that is, that all opinions go through a review process by the Chief Judge and staff.

(2) Transparency

The question of transparency occurs at three levels: (a) within the four walls of the Court, (b) with respect to the parties, and (c) with respect to the general public. When a particular calendar is issued, the list of cities where the Court will sit is published on the Court’s website. The particular Judge assigned to each session is published internally but not for the general public. At this point the Judges know the cities they will travel to. The parties to a particular case will soon learn the name of the Judge assigned because of orders issued or a notice of trial which will advise the parties of the name of the Judge. But a third party reviewing

the Court's website would not immediately become aware of the identity of the Judge assigned to a particular city session.

If the case was specifically assigned to a Judge under the special circumstances described above, the Court will issue an order of assignment and that order would be available to the public. However, an individual would need to be researching a particular case to find the order of assignment. So, for example, if I were aware that Amazon had filed a petition with the U.S. Tax Court, I could go and find that case by name and docket number, and I might then find an assignment order signed by the Chief Judge in the docket record, assigning the case to a particular Judge.

Why do we do it this way? Our Federal law provides that the times and places of sessions of the Tax Court shall be prescribed by the Chief Judge with a view to securing reasonable opportunity for taxpayers to appear before the Tax Court with as little inconvenience and expense as is practicable. 26 United States Code Section 7446. This system also fosters unbiased and neutral decision making.

A taxpayer who files a petition with our Court cannot choose the Judge assigned to their case. There is no opportunity for Judge shopping. While the opinion and decision will be authored by the Judge who heard the case, the Court will ultimately issue the opinion only after thorough and extensive review process. Harold Dubroff & Brant J. Hellwig, *The United States Tax Court: An Historical Analysis* 656-57 (2d ed. 2014); see also discussion in questions 2 and 3. Federal Courts (other than the Tax Court) assign cases differently. They generally use a random selection method, since cases are immediately assigned upon filing with the particular

Court. Since other Federal Courts do not travel to locations around the United States the assignment to a Judge upon filing is efficient. This would not work well for the Tax Court as it would be inefficient and costly to assign cases to a particular Judge with random places of trial.

Under either method it is made clear to the public that when a complaint or petition is filed in the United States Federal Courts, a litigant will get fair, unbiased treatment. The litigants will not be able to select a particular Judge and thus financial ability or political persuasion do not play a role in assignment of cases.

Question 2: How are deliberations by the Judges handled and to what extent does the public have access to the deliberative process?

Answer: While the trial and filings in a case are all part of a public record (see topic 3) the opinion and decision making process is not quite as transparent. After a trial or hearing on a motion, the matter is considered “submitted” to the Judge. The process of drafting an opinion or order is kept within the Judge’s chambers. At some point before release to the public the proposed opinion goes through an internal review process by lawyers who are part of the Chief Judge’s staff and by the Chief Judge. The authoring Judge may make changes as a result of input from the Chief Judge and staff. A day before the opinion is to be released to the parties and the public, the opinion is circulated internally to all Judges who might have thoughts and comments. During that 24-hour period a non-authoring Judge might suggest edits or raise concerns. Edits might be made by the authoring Judge or the opinion might be withdrawn for more extensive changes.

Assuming no objection or that edits and changes are made during the 24-hour period, the opinion will be released at 3:30 p.m. and posted to the Court’s website and fully made available to the parties and the public. The opinion will also be served on the parties (electronically). Earlier drafts, proposed edits or discussions about changes will not be available to the parties or the public.

There are times when an opinion is controversial and there is not agreement among all the voting Judges. In such case the Chief Judge has authority to send the case to Court Conference, where each of the voting Judges get to indicate agreement or disagreement. If

disagreement, a voting Judge has an opportunity to prepare and file a written dissent which will become part of the full written Court Reviewed opinion where Judges may concur or dissent.

The Court Conference review process is considered part of the deliberative process of the Court and is not open to the public. The Court takes great care to keep the deliberative process within the four walls of the Court and it is made clear to all staff that the deliberative process is highly confidential. This deliberative process permits the Judges to consider views of colleagues, make edits and changes and hopefully produce the correct result. The litigants will not be advised that their case is going through the review process; the first they will learn of this is when the opinion is released by the Court. The Court considers this deliberative process to be very important with the goal of providing uniform enforcement of the tax laws enacted by Congress.

On occasion litigants have asked the Chief Judge or the Judge who heard a case to have the matter reviewed by all the voting Judges. Such requests are denied because the Court considers the Court Conference process as part of the deliberative process and ultimately within the purview of the Chief Judge and Judges to decide those cases to be considered by all the voting Judges.

Generally speaking, the issuance of orders, as opposed to opinions, is less complicated. A Judge will generally prepare an order and it will be filed without further review process. Once again, the order considered and prepared by the Judge's chambers is part of the deliberative process and drafts of an order and the process of reaching a conclusion are not made available to the public.

Question 3: Are all proceedings made available to the public or are there some circumstances where proceedings may be kept private, for example the proceedings or record being sealed (corporate secrets) or taxpayer wanting to proceed anonymously?

Answer:

(1) Public Access to Court Records

(A) *General Rules*

Internal Revenue Code (IRC) Section 7458 provides that “[h]earings before the Tax Court and its divisions shall be open to the public, and the testimony, and if the Tax Court so requires...”. Likewise, Section 7461(a) provides that, with specified exceptions, “all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.” Section 7461(b) provides two exceptions to the general rule on evidence being open for public inspection: (1) trade secrets and other confidential information, and (2) the withdrawal of certain original documents upon granting a related motion, but only after the decision of the Court has become final. Regarding trade secrets and other confidential information, section 7461(b)(1) provides that the Tax Court “may make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court.”

Tax Court Rule 103(a) implements the prior provisions. The rule states that: “[u]pon motion by a party or any other affected person, and for good cause shown, the Court may make any order which justice requires” to ensure that “a deposition or other written materials, after

being sealed, be opened only by order of the Court”, that “a trade secret or other information not be disclosed or be disclosed only in a designated way” and that “written materials, after being sealed, be opened only by order of the Court.” Rule 103(a)(6), (7), (8).

Tax Court case law further supports and expands upon these general rules. In Willie Nelson Music Co. v. Commissioner, 85 T.C. 914, 916-917 (1985), the Court asserted that Rule 103(a) is derived from Rule 26(c) of the Federal Rules of Civil Procedure. As such, the Court has looked for guidance from decisions interpreting Rule 26(c) when considering requests for protective orders. Id. A protective order is appropriate where the material is the type of information that courts will protect and the requesting party shows good cause for protecting it. Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984); Estate of Murphy v. Commissioner, T.C. Memo. 1990-346, 60 T.C.M. (CCH) 73, 75; Amazon.com, Inc. & Subsidiaries v. Commissioner, 112 T.C.M. (CCH) 30 (T.C. 2016).

Two recent subsets of case law where “good cause” has been shown for protective orders, despite the counterbalancing societal interest of public access to court records, include: (1) cases involving patents or trade secrets and (2) whistleblower cases.

“Good cause” has been demonstrated and records sealed where patents, trade secrets, or confidential information are involved or where an individual’s business reputation will be hurt. See Willie Nelson at 921. A showing that the information would harm an individual’s personal reputation is generally not sufficient to overcome the strong common law presumption in favor of access to court records. See id. Merely asserting annoyance and embarrassment is also insufficient to demonstrate good cause. See id. at 925.

In a recent Amazon.com case, the Court allowed for the sealing of specific documents and portions of documents, and specific testimony and portions of testimony, be sealed to the extent necessary to prevent disclosure of Amazon's confidential information. Amazon.com, Inc. & Subsidiaries v. Commissioner, 112 T.C.M. (CCH) 30 (T.C. 2016). The Court's concluded that disclosure of its Confidential Information would damage the company and its shareholders by revealing "trade secrets or other confidential information." Id. However, the Court designed the protective order in a manner which would "enable the largest possible percentage of the trial record to be made available for ultimate public inspection, consistently with the protection of Amazon's proprietary business and technological information." Id.

Likewise, in Coca-Cola Co. & Subsidiaries v. Commissioner, T.C. Dkt. No. 31183-15 (Nov. 7, 2017) (order), the Court found "good cause" to grant a protective order under Rule 103(a) for "protecting certain types of documents that were created at certain points in time." However, to protect the public's right of access to Court proceedings, the Court limited the scope of the protective order to a list of specified confidential information including, among other things: most employee information; correspondence and other documents related to negotiation, execution and management of agreements covered by written confidentiality provisions; specified business analyses and data marked by the company as "Highly Restricted" or "Confidential" which were either still in active business use or created during a limited historical window; specified financial budgets and operational results; board committee materials and meeting minutes that were not already available to shareholders or within the public record; and trade secrets. Id.

The Court similarly recognizes the competing interests of a whistleblower and the public. See Whistleblower 14106-10W v. Commissioner, 137 T.C. 183 (2011). In Whistleblower 14106-10W v. Commissioner, 137 T.C. at 183, the Court held that the identity of a whistleblower can be protected upon a sufficient showing of harm that outweighs the societal interests of public access to the Court's records, identifying the following factors to be taken into account when considering those competing interests. Among those factors are: (1) whether the case involves highly personal or sensitive matters, (2) whether the disclosure of identity poses a credible risk of physical harm, and (3) whether disclosure of identity presents other harms, such as the threat of social or professional stigma or economic retaliation. See id. at 193-203.

In Whistleblower 12568-16W v. Commissioner, 148 T.C. 7 (2017), the Court granted a whistleblower's motion to proceed anonymously "until and unless the Court determines differently." Id. at 1. In granting the motion, the Court indicated that it had balanced the competing interests of the whistleblower and the public, which required it to balance the societal interests of protecting the identity of a confidential informant with the public's right to know who is using the public's courts. See id. at 2; see also Whistleblower 14106-10W v. Commissioner, 137 T.C. 183, 205 (2011). However, the Court noted that the balance of a whistleblower's need for anonymity and the public's interest in open judicial proceedings may change as a case progresses. See Whistleblower 12568-16W v. Commissioner, 148 T.C. at 3. The Court stated: "[W]e cannot say that, at some future time in this action, we may not revisit the balancing between alleged harm to petitioner and the societal interest in knowing petitioner's identity and determine that anonymity is no longer justified." Id. at 3.

In contrast, in Whistleblower 14377-16W v. Commissioner, 148 T.C. 25, the Court denied the whistleblower's motion to proceed anonymously because the whistleblower was a serial claimant who had brought a number of whistleblower cases before the Court. The whistleblower chose his targets by analyzing publicly available materials and did not have prior employment or other type of close relationship with the target taxpayers, which suggested that he had "no familiarity with a taxpayer's basis or rationale for taking what petitioner considers an abusive position." Id. at ___ (slip op. at 13-14). The Court concluded that the public interest in identifying serial claimants outweighed petitioner's assertions that he faced professional and financial harm if his identity as a tax whistleblower were disclosed. Id. at ___ (slip op. at 3-4, 16).

(B) *Online Access to Court Records*

In 1999, the Tax Court launched its website, www.ustaxcourt.gov, to provide greater public access to information on the Court, its operations, and its records. Harold Dubroff & Brant J. Hellwig, *The United States Tax Court: An Historical Analysis* 935 (2d ed. 2014). In 2005, the Court began electronically scanning most documents in cases filed on or after January 1 of the same year, and in 2009 the Court began providing both electronic service and filing. Id. at 936. This combination of services has allowed unprecedented digital access to Court documents. Under Tax Court Rule 27(b), parties to a case and their counsel have remote electronic access to any part of the case file that the Court maintains in electronic form. In contrast, public access to Court records are restricted. The public has remote online access only to the Court's docket sheets, opinions and orders through its website. This policy was influenced by, and closely follows, interim guidance issued by the Director of the Administrative Office of

the United States Courts, that provided that no tax information filed with a bankruptcy court be made electronically available to the public in accordance with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. However, the Tax Court provides full public access to its electronic records at the Clerk's Office during the Court's regular business hours. Id. at 938-39.

PART II

Question 4: What personal information (financial, social organizations, family, etc.) are Judges required to provide which may be made available to the parties and the public?

Answer: Judicial officers and certain judicial employees are required to file financial disclosure reports by Title I of the Ethics in Government Act of 1978, Pub. L. No. 95-521, amended by the Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716, 5 U.S.C. app. §§ 101-111 (the Act). The Act enumerates the types of information required and prescribes the general format and procedures for the reports.

(a) Title I of the Act requires that designated federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the federal government by demonstrating that they are able to carry out their duties without compromising the public trust.

(b) Financial disclosure reports are not net-worth statements. Financial disclosure systems seek only the information that the judiciary has deemed relevant to the administration and application of conflict of interest laws, statutes on ethical conduct or financial interests, and regulations on standards of ethical conduct.

(c) Nothing in the Act or these regulations requiring reporting of information or the filing of any report may be deemed to authorize:

- receipt of income, honoraria, gifts, or reimbursements;
- holding of assets, liabilities, or positions; or
- involvement in transactions that are prohibited by law or regulation.

Reporting Thresholds for Assets

(a) As a general rule, when reporting assets, a filer must list each asset that:

(1) exceeds \$1,000 in value or

(2) generated more than \$200 in income during the reporting period.

(b) The income and value of each asset held in brokerage or managed accounts *must be reported individually*.

Types of Reportable Property

Subject to the exceptions examples of the types of property required to be reported include, but are not limited to:

(a) real estate;

(b) beneficial real estate interests (e.g., royalty and mineral rights);

(c) stocks (including stock options), bonds, securities, and futures contracts;

(d) livestock owned for commercial purposes;

(e) commercial crops, either standing or held in storage;

(f) antiques or art held for resale or investment;

(g) beneficial interests in trusts and estates (but not contingent interests);

(h) cash and cash-equivalent accounts in banks or other financial institutions;

(I) pensions, retirement accounts, and annuities (assets must be listed individually), except as provided in § 315.20(c);

(j) mutual funds;

(k) 529 college education funds;

(l) accounts or other funds receivable; and

(m) capital accounts or other asset ownership in a business or partnership, as well as the business or partnership itself.

Interests in Property

(a) Each financial disclosure report filed must include the identity and a brief description of any interest in property having a fair market value in excess of \$1,000:

(1) held by the filer during the reporting period in a trade or business; or

(2) for investment or the production of income.

(b) The report must designate the category of value of the property.

(1) Each item of property must be disclosed separately,

(2) The underlying asset(s) of each of the following items must be **separately** disclosed, unless the entity qualifies for special treatment:

(A) individual retirement accounts (IRAs),

(B) brokerage accounts,

- (c) managed accounts,
- (D) trusts,
- (E) pension funds, and
- (F) 401(k) and 403(b) retirement accounts.

Identification of Assets

Each asset required to be reported must be individually listed and identified with sufficient detail so the reader can readily identify the asset type and/or asset nature.

Transactions

(a) Transactions during the reporting period that involve any purchase, sale, or exchange of any property or asset exceeding \$1,000 must be reported.

(b) A filer must report the:

- (1) type of transaction (e.g., buy, sell, redeem, etc.);
- (2) date of the transaction;
- (3) value of the consideration paid or received;
- (4) opening of a bank account and closing of a bank account that has been reported on a prior report, and
- (5) mandatory distributions from retirement accounts.

(c) If a reportable asset has been bought and sold during the same reporting period, you must provide the required information about both transactions

Value Categories

(a) The value categories specified for property items are as follows:

- (1) \$0 – \$15,000;
- (2) \$15,001 – \$50,000;
- (3) \$50,001 – \$100,000;
- (4) \$100,001 – \$250,000;
- (5) \$250,001 – \$500,000;
- (6) \$500,001 – \$1,000,000; and
- (7) greater than \$1,000,000

315.60 Valuation of Interests in Property

(a) A good faith estimate of the fair market value of interests in property and assets may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer.

(b) Fair market value may also be determined by:

- (1) the purchase price (in which case, the filer should indicate date of purchase);
- (2) recent appraisal;

- (3) the assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);
- (4) the year-end book value of nonpublic traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;
- (5) the net worth of a business partnership;
- (6) the equity value of an individually owned business; or
- (7) any other recognized indication of value (such as the last sale on a stock exchange).

Non-Investment Income

(a) Each financial disclosure report filed must disclose the source, type, and the actual amount or value of earned or other non-investment income in excess of \$200 from any one source that is received by the filer or has accrued to the filer's benefit during the reporting period, including the following:

- (1) Salaries, fees, commissions, wages, and any other compensation for personal services (other than from United States government employment).
- (2) Retirement benefits other than from United States government employment (e.g., Thrift Savings Plan, Social Security).

(3) Any honoraria (the source, date, and amount of payments), including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria.

Note: Filers should not list the name of the recipient of an honoraria made on behalf of the filer on the financial disclosure report. Rather, the filer must simultaneously file with the Judicial Conference's Committee on Financial Disclosure (Committee), on a confidential basis, a corresponding list of all recipients of such payments, together with the dates and amounts.

(4) Any other non-investment income, such as:

- § earnings from teaching,
- § prizes,
- § awards,
- § discharge of indebtedness, and
- § fees earned as trustee of a family trust or executor of a family estate.

Investment income

Each financial disclosure report filed pursuant to this subpart must disclose the following:

(a) The source and type of investment income, including dividends, rents, interest, capital gains, or income from qualified or excepted trusts (**see:** § 365), that is received by the filer or accrued to the filer's benefit during the reporting period, and that exceeds \$200 in amount or value from any one source.

(1) Examples include, but are not limited to:

- § income derived from real estate,

- \$ collectible items,
- \$ stocks,
- \$ bonds,
- \$ notes,
- \$ copyrights,
- \$ pensions,
- \$ mutual funds,
- \$ 401(k) and 403(b) retirement accounts,
- \$ 529 college education funds,
- \$ the investment portion of life insurance contracts,
- \$ loans,
- \$ mineral rights and royalties, and
- \$ personal cash or cash equivalent accounts (as defined in § 315.20(b)).

Gifts and Reimbursements

Gifts

Each financial disclosure report must contain the identity of the source, a brief description, and the value of all gifts aggregating more than \$390 in value that are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include travel locations, dates, and nature of expenses provided.

Reimbursements

Each financial disclosure report must contain the identity of the source and a brief description (including travel locations, dates, and nature of expenses provided) of any travel-related reimbursements aggregating more than \$390 in value that are received by the filer from one source during the reporting period.

Liabilities

Generally

(a) Each financial disclosure report filed must identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed.

(b) The report also must designate the category of value of the liabilities in accordance with reporting the amount owed to the creditor at the end of the reporting period.

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- § 529 college education funds, and
- § other entities with portfolio holdings.

Economic Entities (Businesses and Partnerships)

For property held in a trade, business, partnership, or other business enterprise (e.g., an LLC or sole proprietorship), the filer must list the name and ownership interest in the trade or business, and provide a description of the nature of the trade or business. The source, type, and the actual amount or value of gross income from such a partnership or business must be reported under § 320.10 and § 320.20(b).

(a) Active Assets

Assets actively used in the operation of a trade or business are active assets, which do not need to be individually listed.

(b) Passive Assets

Assets that are passively held in the trade or business and are not related to the nature of the trade or business are passive assets. A filer must list each individual passive asset that is:

- (1) valued at more than \$1,000, or
- (2) earning more than \$200 in income.

Agreements and Arrangements

(a) Each financial disclosure report filed pursuant to this section must identify the parties to, the date of, and a brief description of the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

- (1) future employment;
- (2) a leave of absence from employment during the period of the reporting individual's government service;
- (3) continuation of payments by a former employer other than the United States government; and
- (4) continuing participation in an employee welfare or benefit plan maintained by a former employer.

Outside Positions

Generally

(a) Each financial disclosure report filed must identify all positions held by the filer at any time during the reporting period and any time up to the date of the filing of the report, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) When a filer lists trustee, executor, or a similar position, the filer must also list the assets in the trust or estate for which the position is held if the filer, the filer's spouse, or any dependent child receives income from, or has a beneficial interest in, the estate or fund with which the filer is associated.

Compensation and Financial Interest

Outside positions must be disclosed even if the filer is not compensated and even if neither the filer nor the filer's family has any financial interest in the entities listed.

Exceptions

The following need not be reported:

- (a) positions held in any religious, social, fraternal, or political entity; and
- (b) positions solely of an honorary nature, such as those with an emeritus designation.

Spouses and Dependent Children

Special Disclosure Rules

Each report required under Guide, Vol. 2D, Ch. 2 must also include the following information with respect to the spouse or dependent children of the reporting individual:

(a) Income

The filer must report the following income:

(1) Spouse Non-investment Income

(A) Non-investment income includes such items as salary, royalties, and lottery winnings.

(B) The filer must report the source but not the amount of the spouse's non-investment income (other than honoraria and investment income) exceeding \$1,000 from any one source (other than from the spouse's current employment by the United States government).

(C) If items of earned income are derived from a spouse's self-employment in a business or profession, the filer must report the nature of the business or profession but not the amount of the earned income.

(2) Spouse Honoraria

The source and actual amount or value of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria), and the date on which the services were provided must be reported.

(3) Spouse and Dependent Child Investment Income

With respect to a spouse or dependent child, the type and source, and the amount or value of all other income exceeding \$200 from any one source, such as investment income from interests in property.

Examples:

(A) The spouse of a filer is employed as a teller at Bank X and earns \$23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed.

(B) The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he or she is self-employed as a physician but need not disclose the amount of income.

(C) The spouse of a filer has a Roth IRA with his or her employer, with a total of \$85,000 in it. The report must disclose the underlying assets of that retirement account, as well as any income generated by them, even if that income is tax deferred or reinvested.

(b) Gifts and Reimbursements

The filer must report the identity and a brief description of reportable gifts, and the identity of the source and a brief description of reportable reimbursements received by a spouse or dependent child. Gifts and reimbursements that are received from a relative or totally independent of their relationship to the filer do not have to be reported.

Examples:

(1) After the filer participates in a symposium at the law school, the dean gives the filer and the filer's spouse each a gift. If the value of either gift exceeds the reporting threshold, the filer must report it, including the spouse's gift, because it was received through the filer's relationship with the law school.

(2) If a coworker gives the filer's spouse a gift in appreciation for his or her assistance on a project, the filer is not required to report the gift because the spouse's relationship with the coworker is totally independent of the filer.

(c) Interests in Property, Transactions, and Liabilities

The filer must report all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

(1) the filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that property;

Trusts, Estates, and Investment Funds

Generally

(a) Except as otherwise provided, each financial disclosure report must include the information required by this part of Volume 2 about the holdings — and income from the holdings — of any trust, estate, investment fund, or other financial arrangement from which income is received, or with respect to which a beneficial interest (as defined in Guide, Vol. 2D, § 170) in principal or income is held by the filer or the filer’s spouse or dependent child.

(b) Revocable and Irrevocable Trusts

(1) A revocable trust is a trust in which provisions can be altered or canceled dependent on the grantor. During the life of the trust, income earned is distributed to the grantor, and only after death does asset ownership transfer to beneficiaries.

(2) An irrevocable trust cannot be modified or terminated without the permission of the beneficiary. Once the grantor has transferred assets into the trust, all ownership of the assets and trust are held by the beneficiary.

No information is required about a beneficial interest in the principal or income of a revocable estate or trust. It is not the uncertainty of the time of future enjoyment, but the uncertainty of the right of enjoyment (title and alienation), that differentiates a “revocable” and “non-revocable” trust.

(c) Revocable Living Trust

Nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust (also known as a living trust) with respect to which the filer, the filer's spouse, or dependent child has only a remainder interest, vested or no, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

Furthermore, nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust from which the filer, the filer's spouse, or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, nor the filer's spouse, nor the filer's dependent child.

(1) the item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(2) the filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his or her spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items. Consequently, the filer could not invoke this exception.

Divorce and Separation

A reporting individual need not report any information about:

(a) a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;

- (b) a former spouse or a spouse from whom the reporting individual is permanently separated; or
- (c) any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

Security Issues

The Act makes financial disclosure reports available to the public. Revealing certain identifying information can pose a security risk to the filer or the filer's family. Reporting of the following information is not required, and the Committee recommends that it not be included in financial disclosure reports.

(a) Real Estate

(1) Home Address

Filers should not disclose their home address for any purpose connected with the report. Filers should use their chambers or office address.

(2) Rental Properties

Filers only need to provide the city (or county) and state in which the property is located. Do not use street addresses, lot numbers, or survey descriptions.

(b) Unnecessary Financial Detail

(1) Account Numbers

Filers should not include any bank or brokerage account numbers.

(2) Social Security Number

Filers should not include nor use the social security number for themselves, their spouse, nor their dependent children.

(3) Bank Details

Filers only need to provide the name of a bank, not its address or the branch frequented. Bank account numbers should never be included in a report.

(c) Names of Relatives

Filers should not identify relatives by name nor designation (e.g., “daughter,” “brother,” or “mother-in-law”). Trusts or estates should be identified by number (e.g., “Trust #1” or “Estate #2”).

(d) Financial Documents

Filers should not attach financial documents, brokerage statements, tax returns, deeds, or trust agreements to their report.

No Incorporation by Reference

Each financial disclosure report submitted by a filer must be complete in itself. No information may be adopted or incorporated by reference to prior financial disclosure reports or financial documents, statements, or reports.

Availability of Documents to the Public

Judicial Conference Regulations on Access to Reports

Application

These regulations apply to the processing of all requests for copies of the financial disclosure reports of judges and judiciary employees maintained by the Administrative Office of the U.S. Courts (AO).

Responsibility

(a) The Judicial Conference of the United States has delegated to the Committee on Financial Disclosure the responsibility for implementing the financial disclosure requirements for judges and judicial employees under the Ethics in Government Act of 1978, as amended.

(b) The Committee on Financial Disclosure will monitor the release of financial disclosure reports to ensure compliance with the statute and the Committee's guidance. As provided in § 460.20(d), the Committee will review and, within the Committee's discretion, approve or disapprove any requests for the redaction of statutorily mandated information where the release of the information could endanger a filer or a family member. It will review and approve or disapprove any requests for waiver of costs associated with a request for the release of a financial disclosure report. It will also provide guidance when questions not covered in these regulations arise. The Committee's Subcommittee on Public Access and Security is delegated the authority to act for the Committee where necessary to implement the provisions of these regulations.

(c) The AO is responsible for processing and maintaining financial disclosure reports in accordance with the statute and these regulations.

450 Procedure

(a) The financial disclosure reports filed by judges and judiciary employees are maintained by the AO. In accordance with the statute, the reports are kept for six years, after which they are destroyed.

(b) All requests to examine, or for a copy of, a financial disclosure report must be in writing and contain the following:

(1) the requester's name, occupation, and address;

(2) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) that the requester is aware of the prohibitions with regard to obtaining or viewing the report.

Requesting a Report

(a) Requesters must submit a Form to the staff of the Committee on Financial Disclosure. The form must:

§ include a list of the filers whose reports are requested,

§ be signed and dated by the requester, and

§ contain the information delineated above.

(b) Each Form received that results in the release or viewing of a report will be placed in the file and will be made available to the public throughout the period during which the report is made available to the public.

Request to View a Report

Financial disclosure reports may be viewed in the Committee on Financial Disclosure staff suite by appointment. Appointments must be made at least five working days in advance. Staff will provide the requester with a duplicate redacted copy of the filer's file. In no case will the original file be removed from the file room for review by a member of the public.

Cost

Requesters will be charged \$0.20 per page to cover reproduction and mailing costs. A copy of the requested report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest. Requests for waiver must be presented in writing to the Committee on Financial Disclosure.

Notification of a Request

(a) The Committee on Financial Disclosure will immediately notify the filer when a Form is received requesting the release of the filer's financial disclosure reports and will provide each filer with a copy of the requester's form.

(b) When a request involves a filer who is the subject of an ongoing criminal or ethics investigation by the U.S. Department of Justice or a committee of the Judicial Conference or a circuit judicial council, the Committee will not notify a filer of the request and subsequent release of a financial disclosure report where the originator of the request makes an affirmative request that the filer not be notified. The Committee staff will coordinate with the Chair on the release of reports in connection with such investigation.

Security

(a) Committee staff will take every step to ensure the privacy and security of judges and judiciary employees required to file a financial disclosure report in accordance with the statute and the guidance provided by the Committee on Financial Disclosure. The reports will be maintained securely.

(b) The staff will not release or allow the viewing of any report until notice has been given to the filer.

(c) In accordance with Committee direction, Committee staff will continue to monitor compliance with the Ethics in Government Act of 1978, as amended, while minimizing security risks by redacting information not required by the Act including without limitation:

(1) spouse's and dependents' names;

(2) home addresses;

(3) social security numbers;

(4) financial account and bank account numbers;

(5) street addresses of rental properties, financial institutions, and business properties;

(6) ownership codes; and

(7) filer's signature.

(d) A report that may be disseminated to the public after release to a requester may be redacted pursuant to prevent public disclosure of personal or sensitive information that could endanger the filer or a family member directly, or indirectly by endangering another, if possessed by a member of the public hostile to the filer or a family member. The procedure for determining whether redaction is appropriate will be as follows:

(1) When an annual report is filed, the filer may request redactions believed to be appropriate before release of a report that may be disseminated to the public.

Requests for redaction may also be made after a filer receives a notification of a request.

(2) Reports that will not be considered as ones that may be disseminated to the public after release to a requester include but are not limited to reports released upon request to:

(A) appropriate committees of the Senate or House of Representatives; or

(B) appropriate officials of the Executive Branch.

Note: In the case of (A) and (B), redaction of the filer's signature under may not occur if so indicated by the requester.

(e) The filer must state with specificity what material is sought to be redacted. The filer must also state in detail the reasons justifying redaction. These reasons may include, but are not limited to:

(A) the purposes and need for an ongoing protective detail provided by the United States Marshals Service;

(B) particular threats or inappropriate communications;

(C) involvement in a high threat trial or appeal; or

(D) certain information on the form that could endanger the filer or a family member directly or indirectly if possessed by a member of the public hostile to the filer or a family member.

(f) The Committee will determine, in consultation with the U.S. Marshals Service, whether information sought to be redacted could, if disseminated to the public, endanger the filer or a family member directly or indirectly and grant or deny the request accordingly. Information that could facilitate the financial harassment of a filer or a family member, such as identity theft, may be deemed information that could endanger a filer or a family member. However, no redaction will be granted that eliminates disclosure of the existence, rather than extent, of an interest in an entity that would disqualify the filer from serving as a judge in litigation involving that entity, unless disclosure of that interest would reveal the location of a residence of the filer or a family member, reveal the place of employment of the filer or a family member, or might increase an existing danger to a filer or a family member.

The Committee may redact material without a request from a filer if it has received credible evidence that the release of information contained in a financial report could endanger the filer or a family member.

(1) Information may be redacted from a report in accordance with such finding to the extent necessary to protect the judge or judiciary employee who filed the report and their

families, and the redactions will be made for as long as the reasons for redacting the report exist.

(2) The Committee staff will notify a filer when a report is actually released or reviewed and provide the filer with a copy of the released report with any redactions. The staff will maintain a copy of the redacted material for as long as the original report is maintained.

(3) A request for redaction and its supporting documents, except for copies of the financial disclosure report and any amendments thereto, are considered confidential and will only be used to determine whether to grant a request for redaction. Such documents are not considered to be a part of any report available for release.

Use of Reports

(a) It is unlawful for any person to obtain or use a report:

(1) for any unlawful purpose;

(2) for any commercial purpose other than by news and communications media for dissemination to the general public;

(3) for determining or establishing the credit rating of any individual; or

(4) for use directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(b) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited by this section. The court in which such action is brought may

assess against such person a penalty in any amount not to exceed \$10,000. Such remedy may be in addition to any other remedy available under statutory or common law.

Question 5: What Outside Activities may a Judge Participate in, Speeches etc. What are the limits of the activity and to what extent is the public made aware of these limits?

Answer: The same governing body that regulates financial disclosure and making Judges financial disclosure available to the public also provides guidance for Judges as to activities outside the Court House. The Code of Judicial Ethics is the basic guideline.

In General:

Code of Conduct for United States Judges

Introduction

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.

Canon 2. A Judge should avoid impropriety and the appearance of impropriety in all activities

Canon 3. A Judge should perform the duties of the office fairly, impartially and diligently

Canon 4. A Judge may engage in extracurricular activities that are consistent with the obligations of judicial office

Canon 5. A Judge should refrain from political activity

We look to Canon 4 to answer this question.

Canon 4: A Judge May Engage in Extrajudicial Activities that are Consistent with the Obligations of Judicial Office

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and

may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

(A) Law-related Activities.

(1) *Speaking, Writing, and Teaching.* A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice

(2) *Consultation.* A judge may consult with or appear at a public hearing before an executive or legislative body or official:

(a) on matters concerning the law, the legal system, or the administration of justice;

(b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or

(c) when the judge is acting pro se in a matter involving the judge or the judge's interest.

(3) *Organizations.* A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and

private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.

(4) *Arbitration and Mediation.* A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.

(5) *Practice of Law.* A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

(B) *Civic and Charitable Activities.* A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.

(2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(C) *Fund Raising.* A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over

whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(D) *Financial Activities.*

(1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

(3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.

(4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference Gift Regulations. A "member of the judge's family" means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge's family.

(5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties.

(E) *Fiduciary Activities.* A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(F) *Governmental Appointments.* A judge may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a judge is required by federal statute. A judge

should not, in any event, accept such an appointment if the judge's governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

(G) *Chambers, Resources, and Staff.* A judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.

(H) *Compensation, Reimbursement, and Financial Reporting.* A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.

(3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

COMMENTARY

Canon 4. Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (see, e.g., 18 U.S.C. § 953) a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.

A person other than a spouse with whom the judge maintains both a household and an intimate relationship should be considered a member of the judge's family for purposes of legal assistance under Canon 4A(5), fund raising under Canon 4C, and family business activities under Canon 4D(2).

Canon 4A. Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

Consistent with this Canon, a judge may encourage lawyers to provide pro bono legal services.

Canon 4A(4). This Canon generally prohibits a judge from mediating a state court matter, except in unusual circumstances (e.g., when a judge is mediating a federal matter that cannot be resolved effectively without addressing the related state court matter).

Canon 4A(5). A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

Canon 4B. The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate. For example, in many jurisdictions, charitable hospitals are in court more often now than in the past.

Canon 4C. A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

Canon 4D(1), (2), and (3). Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation

received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

Canon 4D(5). The restriction on using nonpublic information is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Canon 4E. Mere residence in the judge's household does not by itself make a person a member of the judge's family for purposes of this Canon. The person must be treated by the judge as a member of the judge's family.

The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the judge in violation of Canon 4D(3).

Canon 4F. The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the judge’s judicial responsibilities, or tend to undermine public confidence in the judiciary.

Canon 4H. A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon. The Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference impose additional restrictions on judges’ receipt of compensation. That Act and those regulations should be consulted before a judge enters into any arrangement involving the receipt of compensation. The restrictions so imposed include but are not limited to: (1) a prohibition against receiving “honoraria” (defined as anything of value received for a speech, appearance, or article), (2) a prohibition against receiving compensation for service as a director, trustee, or officer of a profit or nonprofit organization, (3) a requirement that compensated teaching activities receive prior approval, and (4) a limitation on the receipt of “outside earned income.”

The Judicial Conference also provides answers to questions posed by Judges and publishes those answers in a compendium. All of this information is made available to the public and can be found on the website of the United States Courts.

There are a number of advisory opinions relating to extra-curricular activities which are available to the public.

Question 6: How are Complaints by the parties against a Judge handled and to what extent are the complaint procedures and proceedings available to the parties and the public?

Answer: The process of complaining about judicial misconduct or disability is outlined in the *Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court* (the Rules). The Rules govern proceedings under the Judicial Conduct and Disability Act (the Act), 28 U.S.C. Sections 351-364, made applicable to the Tax Court by 26 U.S.C. Section 7466. In accordance with Sections 353 and 354 of the Act, the Tax Court has formed a Judicial Conduct and Disability Council (the Council) to perform conduct investigations. See Rules at 2. The Rules and a sample complaint form are available on the U.S. Tax Court website and from the Office of the Clerk of the Court, United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. All complaints must be filed with the Office of the Clerk of the Court (the Clerk).

Parties may submit official complaints about U.S. Tax Court Judges they believe have committed misconduct or have become disabled, thereby engaging in “conduct Prejudicial to the effective and expeditious administration of the business of the Tax Court” or becoming “unable to discharge the duties of office because of mental or physical disability”. Id. at 1.

“Misconduct” is “conduct prejudicial to the effective and expeditious administration of the business of the courts.”¹ Id. at 3. A “disability” is a “temporary or permanent impairment, physical or mental” that renders the Judge “unable to discharge the duties” of the judicial office.

¹ Some examples of misconduct include, but are not limited to: (1) having improper discussions with parties or counsel for one side in a case, (2) soliciting funds for organizations, (3) retaliating against complainants, witnesses or others for their participation in the complaint process. For a broader list of examples of misconduct, please see Rules at 3-4.

Id. at 2.² In addition, when the Chief Judge has information constituting “reasonable grounds for inquiry” into a judge’s alleged conduct or disability, the Chief Judge may identify such complaint and conduct an inquiry even if there has not been a formal complaint. Id. at 5.

Complaints may be filed or identified by the Chief Judge at any time. Id. at 7. However, a complaint must be dismissed if the passage of time will make it impracticable to hold an accurate and fair investigation. Id.

Pursuant to the Rules, the complaint process may only be applied to Judges, Senior Judges and Special Trial Judges at the U.S. Tax Court, and may not be used to make complaints about other Tax Court personnel.³ The complaint process may not be used to complain about a Judge’s rulings on the merits of the case, unless such a complaint includes supporting allegations of judicial misconduct or disability in relation to the rulings in question. A complainant who files “repetitive, harassing or frivolous complaints, or has otherwise abused the complaint procedure” may be restricted from filing additional complaints by the Council. Id. at 7.

(a) The Process of Complaint

In order to make a complaint, the complainant must file one original and two copies of a written complaint with the Clerk. The complainant does not have to use the

² Examples of disability include substance abuse, the inability to stay awake during court proceedings, or impairment of cognitive abilities that renders the judge unable to function effectively. See Rules at 2.

³ Complaints about non-Judge Tax Court employees may be made to the Chief Judge of the Tax Court. Complaints about lawyers and other persons admitted to practice before the Tax Court may be made to the Admissions Section of the Office of the Clerk.

complaint form available on the Court website, it is merely a tool to help the complainant file all necessary information. All complaints must be legible and must include:

(1) a brief statement of the facts, detailing the relevant events, their time and location, any information that would help an investigator check the facts of the complaint and additional facts to support an allegation of disability, if necessary; and

(2) the complainant's address and signature, submitted under penalty of perjury. Id. at 3-4.

After receipt of the complaint, the Clerk will open a file, assign a docket number to the complaint, and acknowledge its receipt. The Clerk will then send copies to the Chief Judge or the judge authorized to act as Chief Judge, and to the judges accused of misconduct or disability. Id. at 7.

When the Chief Judge receives a complaint, he or she must review it unless they are personally disqualified from the process under Rule 25, for reasons including being the subject of the complaint. Id. at 8. After review and/or limited inquiry, the Chief Judge will determine whether the complaint should be dismissed, concluded on the grounds that voluntary corrective action has been taken, concluded because intervening events have made action unnecessary, or referred to a Special Committee. Id. Permissible grounds for dismissal include that the complaint:

- (1) alleges conduct that, even if true, would not be prejudicial or indicate a mental or physical disability that would result in the inability to discharge the duties of judicial office;
- (2) is related to the merits of a decision or procedural ruling;
- (3) is frivolous;
- (4) is based on allegations that are incapable of being established through investigation;
- (5) has been filed in the wrong court; or
- (6) is otherwise not appropriate for consideration under the Act.

A complaint may not be dismissed merely because it repeats allegations of a previously dismissed complaint if the information included is material and the complaint does not constitute harassment of the subject judge. Id. Upon dismissal, the Chief Judge must prepare a supporting memorandum which will be sent to the complainant, subject judge and the Council. The complainant will be notified of their right to petition the Council for review under Rule 18. Id. at 11.

If the Chief Judge determines that all or part of a complaint should continue, he or she must invite the subject judge to respond to the complaint orally or in writing if they have not been given the opportunity already. Id. at 10. The Chief Judge must then appoint a Special Committee to investigate and to make recommendations to the Council. Upon appointing the Special Committee, the Chief Judge must notify the complainant and the subject judge that the

matter has been referred to a committee and send a copy of the order appointing the Special Committee to the Council. Id.

The Special Committee will then perform an investigation, including any interviews and hearings that it considers necessary. Both the complainant and subject judge may submit written argument to the committee, and the subject judge must also be given a reasonable opportunity to present oral argument. The committee will determine in its discretion if the complainant should also have the opportunity to present oral argument. Id. at 15-16. After concluding its investigation, the Special Committee will file a comprehensive report of its investigation with the Council, accompanied by a statement of the vote by which it was adopted and any separate or dissenting statements from committee members. Id. at 16.

After reviewing the Special Committee report and complaint, the Council will prepare an order acting on the complaint. The order may terminate the complaint either through dismissal or concluding it or prescribe additional remedial action ranging from private censure of the subject judge, to a recommendation or removal of the judge from office. Id. at 20-22. The Council may also return the matter to the Special Committee if it finds that the committee report did not provide an adequate basis for its decision. Id. at 22. The Complainant will be served with a copy of the Council's order and determination. If the Council has not already referred the complaint to the Judicial Conference of the United States (the "Judicial Conference"), the complainant may submit a petition for review with the Committee on Judicial Conduct and Disability of the Judicial Conference. Any such petition must be submitted to the Judicial Conference via mail or email within 42 days of the order issued by the Council. Id. at 24-27.

(b) Public Availability of Decision

When either the Council or Chief Judge has taken final action on a complaint and it is no longer subject to review, all orders, including memoranda incorporated by reference in those orders and any dissenting opinions or separate statements by members of the Council, must be made available to the public. The orders will be placed in a publicly accessible file in the office of the Clerk and on the Tax Court website. If the Chief Judge determines the orders have precedential value, he or she may cause them to be published. Id. at 29-30. In general, additional materials on the deliberative process of judicial complaints in the Tax Court are not made available to the public. See id.

There are some exceptions to the general rule on public access. First, if the complaint is finally dismissed without appointment of a Special Committee or concluded because of voluntary corrective action, the publicly available materials may not disclose the name of the subject judge without his or her consent. Additionally, if the complaint is concluded because of intervening events, or dismissed at any time after a Special Committee is appointed, the Council must determine if the name of the subject judge should be disclosed. Id. at 29. Finally, if the complaint is referred to the Judicial Conference, materials related to it will only be made public if ordered by the Judicial Conference. Id. at 30.

(c) Further Information on the Complaint Process

For additional information on the U.S. Tax Court judicial complaint process, please see the following materials available at

https://www.ustaxcourt.gov/rules_judicial_conduct_and_disability.htm:

- § *Rules for Judicial Conduct and Disability Proceedings:*
https://www.ustaxcourt.gov/rules/judicial_misconduct_or_disability/jcd_rules.pdf
- § *User's Guide for Submitting a Complaint of Judicial Misconduct or Judicial Disability:*
https://www.ustaxcourt.gov/rules/judicial_misconduct_or_disability/jcd_users_guide.pdf
- § *Sample complaint form:*
https://www.ustaxcourt.gov/rules/judicial_misconduct_or_disability/jcd_complaint_form.pdf
- § *Archive of Orders Issued on Judicial Conduct and Judicial Disability Cases:*
https://www.ustaxcourt.gov/rules_judicial_conduct_and_disability_orders_issued.htm