

**International Association of Tax Judges
Fifth Assembly, Washington, D.C.
October 23 and 24, 2014
Panel on Protection of Taxpayer in Court
Special Trial Judge Lewis R. Carluzzo
United States Tax Court**

I. Self-represented Parties

A. Statistics - United States Tax Court

1. As of August 31, 2014, there were 27,588 cases pending before the Court. The petitioners were self-represented in 19,721 (71%) of those cases.

a. Small tax cases - 92% self-represented

b. Regular cases - 56% self-represented

B. Typical problems

1. Lack of understanding of process

a. Adversary proceedings evolved assuming sophisticated litigants

2. Lack of preparation

a. Failure to take advantage of available assistance

3. Lack of understanding of controlling law

a. Inadequate assistance to Court

C. Typical solutions

1. Comprehensive instructions on website

a. Tension between assisting the self-represented and encouraging self-representation.

2. Pro Bono and legal aid/clinic assistance

a. Availability in cases before the U.S. Tax Court

3. Court intervention

a. Tension between appearance of impartiality and assistance to self-represented taxpayers.

b. Judicial Code of Conduct D.C. Superior Court

Rule 2.2: Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure litigants who do not have the assistance of counsel the opportunity to have their matters fairly heard. See Comment [1A] to Rule 2.6, which describes the judge's affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard.

Rule 2.6: Ensuring the Right to Be Heard

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(A) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[1A] The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. Pursuant to Rule 2.2, the judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should make reasonable accommodations that help litigants who are not represented by counsel to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. In some circumstances, particular accommodations for self-represented litigants may be required by decisional or other law. Steps judges may consider in facilitating the right to be heard include, but are not limited to, (1) providing brief information about the proceeding and evidentiary and foundational requirements, (2) asking neutral questions to elicit or clarify information, (3) modifying the traditional order of taking evidence, (4) refraining from using legal jargon, (5) explaining the basis for a ruling, and (6) making referrals to any resources available to assist the litigant in the preparation of the case.

II. Pro Bono/Clinic Programs and Limited Scope Retainers

A. American Bar Association programs

1. Calendar call programs

2. Income considerations vary

B. I.R.S. Restructuring Act of 1998

1. Low income taxpayer clinics

a. Law schools

b. Other organizations

i. Legal Services Corporation Act
42 U.S.C. 2996 et seq.

c. Role of the Taxpayer Advocate

2. Income limitations in effect

C. Limited scope representations

1. Not provided for in Tax Court Rules

a. Practical approaches

2. D.C. Superior Court Admin Order

D.C. Superior Court Expands Limited-Scope Representation

On June 16 the Superior Court of the District of Columbia issued an administrative order allowing temporary, limited-scope representation throughout the court. The court administered the ruling as a response to the growing trend of litigants going to court unrepresented, often with negative consequences.

The administrative order marks an expansion of the ability to use limited-scope representation at the court. Pro bono and paid lawyers may now

provide limited-scope representation for eligible, low-income clients in the court's Civil Division, Domestic Violence Unit, Family Court, Probate Division, and Tax Division. Under the order, limited-scope representation is not permitted in jury trials.

Previously, the court issued several administrative orders allowing limited-scope representation when representing pro bono clients in the Civil Actions Branch Collections Calendar, Landlord and Tenant Branch, Paternity and Child Support Branch, and Small Claims and Conciliation Branch

The court's decision was informed, in part, by a report issued in April 2013 by the Limited Scope Working Group, a combined effort of the D.C. Bar Pro Bono Program and the D.C. Access to Justice Commission. The report developed recommendations to institutionalize the practice of limited-scope representation and recommended that the Superior Court draft a court-wide rule and accompanying forms that broadly permit limited-scope representation by paid and pro bono lawyers.

III. Alternative Dispute Resolution

- A. Administrative Dispute Resolution Act of 1996
- B. I.R.S. Procedures
 - 1. I.R.S. Appeals Office
- C. Tax Court

1. Rule 124
 - a. Voluntary binding and nonbinding arbitration
 - b. Mediation
2. Practical approach
 - a. Assignment of settlement judge
 - b. Settlement conference after trial

IV. Costs and Technology

- A. I.R.C. section 7430 (awards of administrative and litigation costs)
 1. Self-represented lack of cooperation often precludes entitlement to an award
- B. Electronic filing and service effective since July 2010
 1. Mandatory for most represented parties; optional for self-represented parties
- C. Electronic courtroom/remote hearings
 1. Not practical for self-represented parties
 2. Telephonic conferences and hearings