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AMENDMENTS TO THE TAX COURT RULES OF PRACTICE AND
PROCEDURE ARE ON PAGES 299–317 OF THIS REPORT

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DAVID GUSTAFSON
ELIZABETH CREWSON PARIS
RICHARD T. MORRISON
KATHLEEN KERRIGAN
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THOMAS B. WELLS
ROBERT P. RUWE ¹
JOHN O. COLVIN
JAMES S. HALPERN

JUAN F. VASQUEZ
L. PAIGE MARVEL
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LEWIS R. CARLUZZO, *Chief Special Trial Judge*

PETER J. PANUTHOS
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DIANA L. LEYDEN

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SHEILA A. MURPHY, *Reporter of Decisions*

¹Termination of recall November 25, 2020.

**AMENDMENTS
TO THE
RULES OF PRACTICE AND PROCEDURE
OF THE
UNITED STATES TAX COURT**

Rules 21, 24, 260, 261, and 262 of the Rules of Practice and Procedure (Rules) of the United States Tax Court are amended. The effective dates of the amendments are stated in Notes to the Rules.

The Notes accompanying these amendments were prepared by the Rules Committee and are included herein for the convenience of the public and the Bar. They are not officially part of the Rules and are not included in the printed publication prepared for general distribution.

RULE 21. SERVICE OF PAPERS

(a) When Required: Except as otherwise required by these Rules or directed by the Court, all pleadings, motions, orders, decisions, notices, demands, briefs, appearances, or other similar documents or papers relating to a case, including a disciplinary matter under Rule 202, also referred to as the papers in a case, shall be served on each of the parties or other persons involved in the matter to which the paper relates other than the party who filed the paper.

(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. Unless otherwise provided in these Rules or directed by the Court, all other papers required to be served on a party shall be served by the party filing the paper, and the original paper shall be filed with a certificate by a party or a party's counsel that service of that paper has been made on the party to be served or such party's counsel. For the form of such certificate of service, see the Appendix, Form 9. Such service may be made by:

(A) Mail directed to the party or the party's counsel at such person's last known address. Service by mail is complete upon mailing, and the date of such mailing shall be the date of such service.

(B) Delivery to a party, or a party's counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)).

(C) Mail directed or delivery to the Commissioner's counsel at the office address shown in the Commissioner's answer filed in the case or a motion filed in lieu of an answer. If no answer or motion in lieu of an answer has been filed, then mail shall be directed or delivered to the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224.

(D) Electronic means if the person served consented in writing, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.

Service on a person other than a party shall be made in the same manner as service on a party, except as otherwise pro-

vided in these Rules or directed by the Court. In cases consolidated pursuant to Rule 141, a party making service of a paper shall serve each of the other parties or counsel for each of the other parties, and the original and copies thereof required to be filed with the Court shall each have a certificate of service attached.

(2) *Counsel of Record*: Whenever under these Rules service is required or permitted to be made upon a party represented by counsel who has entered an appearance, service shall be made upon such counsel unless service upon the party is directed by the Court. Where more than one counsel appear for a party, service is required to be made only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service is required to be made only on the person so designated.

(3) *Writs and Process*: Service and execution of writs, process, or similar directives of the Court may be made by a United States marshal, by a deputy marshal, or by a person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 147(c). The person making service shall make proof thereof to the Court promptly and in any event within the time in which the person served must respond. Failure to make proof of service does not affect the validity of the service.

(4) *Change of Address*: The Court shall be promptly notified, by a notice of change of address filed with the Court, of the change of mailing address of any party, any party's counsel, or any party's duly authorized representative in the case of a party other than an individual (see Rule 24(e)). A separate notice of change of address shall be filed for each docket number. For the form of such notice of change of address, see the Appendix, Form 10.

(5) *Using Court Transmission Facilities*: A party may make service under Rule 21(b)(1)(D) through the Court's transmission facilities pursuant to electronic service procedures prescribed by the Court.

Note

Paragraphs (b)(1) and (4) of Rule 21 are amended to remove references to Appendix I and replace them with references to the Appendix. Paragraph (b)(4) of Rule 21 is also amended to conform with amendments to Rule 24. The amendments are effective October 6, 2020.

RULE 24. APPEARANCE AND REPRESENTATION**(a) Appearance:**

(1) *General:* Counsel may enter an appearance by signing and filing:

- (A) the petition or other initial pleading or document;
- (B) an entry of appearance; or
- (C) a substitution of counsel in accordance with paragraph (d).

See Rules 22, 23, and 26 relating to signing and filing papers with the Court.

(2) *Required Information:* Any paper that counsel may use to enter an appearance must include:

- (A) the case name and docket number (if any); and
- (B) counsel's name, mailing address, email address (if any), telephone number, and Tax Court bar number.

(3) *Counsel Not Admitted to Practice:* An entry of appearance filed by counsel not admitted to practice before the Court is not effective until counsel is admitted. Where it appears that counsel who is not admitted to practice can and will be promptly admitted to practice, the Court may recognize that counsel in a pending case. See Rule 200 regarding the procedure for admission to practice before the Court and Rule 201(a) regarding conduct of practice before the Court.

(4) *Limited Appearance and Special Recognition:*

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

(B) *Special Recognition:* The Court may, in its discretion, temporarily recognize an individual as the party's representative, and no entry of appearance is necessary.

(5) *Law Student Assistance:* A law student may assist counsel with drafting a pleading or other document to be filed with the Court. In addition, with the permission of the presiding Judge or Special Trial Judge, and under counsel's direct supervision, a law student may present all or any part of the party's case at a hearing or trial. A law student may not, however, enter an appearance in any case, be recognized as counsel in a case, or sign a pleading or other document filed with the Court.

(b) Representation Without Counsel:

(1) *General:* A party that is not represented by counsel may proceed as follows:

- (A) an individual may represent himself or herself;
- (B) an authorized officer may represent a corporation;
- (C) an authorized individual may represent an unincorporated association; and
- (D) a fiduciary may represent an estate or trust.

See Rule 60 regarding proper parties and capacity.

(2) *Required Information:*

(A) The initial pleading or other paper filed by a party must include the party's name, mailing address, email address (if any), and telephone number.

(B) If the initial pleading or other paper is filed by an authorized officer, authorized individual, or fiduciary, it must also include that person's name, mailing address,

email address (if any), telephone number, and capacity in which that person is appearing.

(c) Withdrawal of Counsel:

(1) *Notice of Withdrawal as Counsel:* Counsel desiring to withdraw as counsel for a party may file a notice of withdrawal as counsel if:

(A) more than one counsel entered appearances for that party and at least one counsel will continue to serve as counsel for that party;

(B) the notice of withdrawal is filed no later than 30 days before the first day of the Court's session at which the case is calendared for trial; and

(C) there is no objection to the withdrawal.

(2) *Motion To Withdraw as Counsel:* Counsel desiring to withdraw as counsel for a party but who is ineligible to do so under paragraph (c)(1) must file a motion to withdraw as counsel.

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

(4) *General Requirements:*

(A) Any notice or motion under this paragraph must include a statement that counsel or the party provided prior notice of the notice or motion to the counsel's client or the party's counsel and to each of the other parties to the case or their counsel and whether there is any objection to the motion.

(B) Any motion to withdraw as counsel or to withdraw counsel must also include the party's then-current mailing address, email address (if any), and telephone number.

(d) Substitution of Counsel:

(1) No later than 30 days before the first day of the Court's session at which the case is calendared for trial, counsel who has not previously appeared for a party in

that case may enter an appearance by filing a substitution of counsel substantially in the form set forth in the Appendix, Form 8.

(2) The substitution of counsel must state that:

(A) substituted counsel enters an appearance for the party;

(B) current counsel's appearance is withdrawn for the party;

(C) current counsel provided prior notice of the substitution to the counsel's client and to each other party or their counsel; and

(D) there is no objection to the substitution.

(3) The substitution of counsel must be signed by current counsel and by substituted counsel, contain the information required by paragraph (a)(2), and be filed by the substituted counsel.

(4) Counsel entering an appearance as substituted counsel within 30 days of the first day of the Court's session at which the case is calendared for trial must file an entry of appearance under paragraph (a), and any related withdrawal of counsel must be undertaken in accordance with paragraph (c).

(e) Change in Required Information: A party or counsel must promptly notify the Clerk in writing of any change in the information required under this Rule, or of the death of counsel, for each docket number involving that party or in which counsel has entered an appearance.

(f) Change in Party or Authorized Representative or Fiduciary: Where (1) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in the representative or fiduciary, or (2) there is a substitution of parties in a pending case, counsel signing the motion resulting in the Court's approval of the change or substitution will thereafter be deemed first counsel of record for the representative, fiduciary, or party. Counsel of record for the former

representative, fiduciary, or party desiring to withdraw as counsel must file a motion in accordance with paragraph (c)(2).

(g) Limitations on Representation:

(1) *Conflict of Interest:* If any counsel of record (A) was involved in planning or promoting a transaction or operating an entity that is connected to any issue in a case, or (B) represents more than one person with differing interests with respect to any issue in a case, then that counsel must either secure the client's informed written consent; withdraw from the case; or take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct. See Rules 1.7 and 1.8, ABA Model Rules of Professional Conduct. The Court may inquire into the circumstances of counsel's employment in order to deter such violations. See Rule 201.

(2) *Counsel as Witness:*

(A) Counsel may not represent a party at trial if the counsel is likely to be a necessary witness within the meaning of the ABA Model Rules of Professional Conduct unless: (i) the testimony relates to an uncontested issue; (ii) the testimony relates to the nature and value of legal services rendered in the case; or (iii) disqualification of counsel would work substantial hardship on the client. See Rule 3.7, ABA Model Rules of Professional Conduct.

(B) Counsel may represent a party at trial in which another professional in the counsel's firm is likely to be called as a witness unless precluded from doing so under the ABA Model Rules of Professional Conduct. See Rules 1.7 and 1.9, ABA Model Rules of Professional Conduct.

Note

Rule 24 is amended stylistically to enhance its readability; to simplify the procedures governing the appearance, substitution, and withdrawal of counsel representing a party; and to clarify certain limitations on counsel's ability to represent a party.

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

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

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

tice of withdrawal will be effective when it is entered on the docket record for the case.

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

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

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

All amendments are effective October 6, 2020.

RULE 260. PROCEEDING TO ENFORCE OVERPAYMENT DETERMINATION

(a) Commencement of Proceeding: (1) *How Proceeding Is Commenced:* A proceeding to enforce an overpayment determined by the Court under Code section 6512(b)(1) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court determined the overpayment.

(2) *When Proceeding May Be Commenced:* A proceeding under this Rule may not be commenced before the expiration of 120 days after the decision of the Court determining the overpayment has become final within the meaning of Code section 7481(a).

(b) Content of Motion: A motion to enforce an overpayment determination filed pursuant to this Rule shall contain the following:

- (1) The petitioner's name and current mailing address.
- (2) A statement whether any dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court and, if such a dispute exists, clear and concise lettered statements of the facts regarding the dispute and the petitioner's position in respect of each disputed matter.
- (3) A copy of the Court's decision which determined the overpayment, together with a copy of any stipulation referred to therein and any computation filed pursuant to Rule 155 setting forth the amount and date of each payment made by the petitioner.
- (4) A copy of the petitioner's written demand on the Commissioner to refund the overpayment determined by the Court, together with interest as provided by law; this demand shall have been made not less than 60 days before the filing of the motion under this Rule and shall have been made on the Commissioner through the Commissioner's last counsel of record in the action in which the Court determined the overpayment which the petitioner now seeks to enforce by this motion.
- (5) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) Response by the Commissioner: Within 30 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically admit or deny each allegation set forth in the petitioner's motion. If a dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court, then the Commissioner's response shall also include clear and concise statements of the facts regarding the dispute and the Commissioner's position in respect of each disputed matter.

If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) Disposition of Motion: A motion to enforce an overpayment determination filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court determined the overpayment which the petitioner now seeks to enforce will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a) or a substitution of counsel pursuant to Rule 24(d).

(f) Cross-Reference: For the need, in the case of an overpayment, to include the amount and date of each payment made by the petitioner in any computation for entry of decision, see paragraphs (a) and (b) of Rule 155.

Note

Paragraph (e) of Rule 260 is amended to conform with amendments to Rule 24. The amendment is effective October 6, 2020.

RULE 261. PROCEEDING TO REDETERMINE INTEREST

(a) Commencement of Proceeding: (1) *How Proceeding Is Commenced:* A proceeding to redetermine interest on a deficiency assessed under Code section 6215 or to redetermine interest on an overpayment determined under Code section 6512(b) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the

same docket number as that of the action in which the Court redetermined the deficiency or determined the overpayment.

(2) *When Proceeding May Be Commenced:* Any proceeding under this Rule must be commenced within 1 year after the date that the Court's decision becomes final within the meaning of Code section 7481(a).

(b) Content of Motion: A motion to redetermine interest filed pursuant to this Rule shall contain:

(1) *All Motions:* All motions to redetermine interest shall contain the following:

(A) The petitioner's name and current mailing address.

(B) A statement setting forth the petitioner's contentions regarding the correct amount of interest, together with a schedule detailing the computation of that amount.

(C) A statement whether the petitioner has discussed the dispute over interest with the Commissioner, and if so, the contentions made by the petitioner; and if not, the reason or reasons why not.

(2) *Motions To Redetermine Interest on a Deficiency:* In addition to including the information described in paragraph (b)(1) of this Rule, a motion to redetermine interest on a deficiency shall also contain:

(A) A statement that the petitioner has paid the entire amount of the deficiency assessed under Code section 6215 plus interest claimed by the Commissioner in respect of which the proceeding under this Rule has been commenced.

(B) A schedule setting forth—

(i) the amount of each payment made by the petitioner in respect of the deficiency and interest described in paragraph (b)(2)(A) of this Rule,

(ii) the date of each such payment, and

(iii) if applicable, the part of each such payment allocated by the petitioner to tax and the part of each such payment allocated by the petitioner to interest.

(iv) A copy of the Court's decision which redetermined the deficiency, together with a copy of any notice of assessment including any supporting schedules or any collection notice that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(3) *Motions To Redetermine Interest on an Overpayment:* In addition to including the information described in paragraph (b)(1) of this Rule, a motion to redetermine interest on an overpayment shall also contain:

(A) A statement that the Court has determined under Code section 6512(b) that the petitioner has made an overpayment.

(B) A schedule setting forth—

(i) the amount and date of each payment made by the petitioner in respect of which the overpayment was determined, and

(ii) the amount and date of each credit, offset, or refund received from the Commissioner in respect of the overpayment and interest claimed by the petitioner.

(C) A copy of the Court's decision which determined the overpayment, together with a copy of any notice of credit or offset or other correspondence that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(4) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) Response by the Commissioner: Within 60 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically address each of the contentions made by the petitioner regarding the correct amount of interest and the petitioner's computation of that amount. The Commissioner shall attach to the Commissioner's response a schedule detailing the computation of interest claimed to be owed to or due from the Commissioner and, in the case of a motion to redetermine interest on an overpayment, the amount and date of each credit, offset, or refund made by the Commissioner and, if applicable, the part of each such credit, offset, or refund allocated by the Commissioner to the overpayment and the part of each such credit, offset, or refund allocated by the Commissioner to interest. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) Disposition of Motion: A motion to redetermine interest filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court redetermined the deficiency or determined the overpayment the interest in respect of which the petitioner now seeks a redetermination will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a) or a substitution of counsel pursuant to Rule 24(d).

Note

Paragraph (e) of Rule 261 is amended to conform with amendments to Rule 24. The amendment is effective October 6, 2020.

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

(a) Commencement of Proceeding: A proceeding to modify a decision in an estate tax case pursuant to Code section 7481(d) shall be commenced by filing a motion with the Court accompanied by a proposed form of decision. The petitioner shall place on the motion and the proposed form of decision the same docket number as that of the action in which the Court entered the decision which the petitioner now seeks to modify.

(b) Content of Motion: A motion to modify a decision filed pursuant to this Rule shall contain the following:

(1) The name and current mailing address of each fiduciary authorized to act on behalf of the estate.

(2) A copy of the decision entered by the Court which the petitioner now seeks to modify.

(3) A statement that the time for payment by the estate of an amount of tax imposed by Code section 2001 has been extended pursuant to Code section 6166.

(4) A schedule setting forth—

(A) the amount of interest paid by the estate on any portion of the tax imposed by Code section 2001 on the estate for which the time of payment has been extended under Code section 6166;

(B) the amount of interest on any estate, succession, legacy, or inheritance tax imposed by a State on the estate during the period of the extension of time for payment under Code section 6166; and

(C) the date that each such amount of interest was paid by the estate.

(5) A statement describing the nature of any dispute within the purview of Code section 7481(d), or if no such dispute exists, then a statement to that effect.

(6) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) Response by Commissioner in Unagreed Case:

If a dispute exists between the parties regarding either the petitioner's right to relief under Code section 7481(d) or the amount of interest deductible as an administrative expense under Code section 2053, then the Commissioner shall, within 60 days after service of a motion filed pursuant to this Rule, file a written response accompanied by a proposed form of decision. The response shall identify the nature of the dispute, shall specifically admit or deny each allegation set forth in the petitioner's motion, and shall state the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) Disposition of Motion: A motion to modify a decision filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court entered the decision which the petitioner now seeks to modify will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a) or a substitution of counsel pursuant to Rule 24(d).

(f) **Cross-Reference:** For the need to move the Court to retain its official case file in the action with respect to which the petitioner seeks to modify the decision, see Rule 157.

Note

Paragraph (e) of Rule 262 is amended to conform with amendments to Rule 24. The amendment is effective October 6, 2020.