

USTCP Exam Course

Legal Ethics Comprehensive Outline

(Updated May 2026)

Admission, Competence, Diligence, Scope, and Limited Appearances

I. Governing Framework for Ethics in U.S. Tax Court

A. Core Authority

Source	Rule	What Students Must Know
Tax Court Rule 200	Admission to Practice	Who may be admitted, how nonattorneys qualify, sponsorship, good character, registration status.
Tax Court Rule 201	Conduct of Practice	Practitioners must follow the letter and spirit of the ABA Model Rules of Professional Conduct.
Tax Court Rule 24	Appearance and Representation	How counsel appears, when appearance is effective, withdrawal, substitution, limited appearance, representation without counsel.
ABA Model Rule 1.1	Competence	Requires legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
ABA Model Rule 1.2	Scope and Client Authority	Client controls objectives and settlement; lawyer consults on means; limited representation allowed if reasonable and with informed consent.
ABA Model Rule 1.3	Diligence	Lawyer must act with reasonable diligence and promptness.
ABA Model Rule 1.4	Communication	Lawyer must keep client informed and explain matters enough for informed decisions.

B. Exam Rule

- In Tax Court ethics questions, always ask:
 - Is the practitioner admitted and in good standing?
 - Has counsel entered a valid appearance?
 - Is the representation general or limited?
 - Has the client given informed consent?
 - Is the lawyer competent and diligent for the task?
 - Has the lawyer respected client authority, especially settlement?
 - Has the lawyer complied with Tax Court procedural rules?
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II. Admission to Practice Before the U.S. Tax Court

A. General Admission Standard

Under **Tax Court Rule 200**, an applicant must show:

- Good moral character.
- Professional character.
- Requisite qualifications to provide competent representation before the Court.
- Compliance with the Rule 200 application and admission requirements.

Exam Point

Admission is not automatic. The Court may deny admission if the applicant does not satisfy Rule 200.

B. Attorney Applicants

Attorney applicants generally must:

- File the Court's application.
- Pay the required fee.
- Submit a current certificate showing admission and good standing before the Supreme Court, highest state court, D.C. court, or proper court of a U.S. territory or possession.
- Use a certificate executed within 90 calendar days before filing the application.

Example

Example: Lawyer A is admitted in Virginia and submits a certificate of good standing dated 8 months before filing the Tax Court application.

Result: The certificate is not current for Rule 200 purposes because it must be executed within 90 calendar days before filing.

C. Nonattorney Applicants

Nonattorney applicants must:

- File the required application.
- Pay the required fee.
- Pass the written nonattorney examination.
- Show they possess the qualifications needed for competent representation before the Tax Court.

Exam Point

A nonattorney who passed the exam is not fully admitted until the Court approves the admission process and the applicant satisfies the remaining requirements.

D. Sponsorship Requirement for Nonattorneys

After passing the exam, an applicant for admission by examination must generally be sponsored by at least two people already admitted to practice before the Tax Court. Sponsors must send recommendation letters directly to the Admissions Clerk, describing the sponsor's acquaintance with the applicant, the applicant's moral character, reputation, and qualifications to practice before the Court.

Requirement	Rule
At least two sponsors	Required unless Court accepts fewer
Sponsors must already be admitted	Yes
Letters sent directly to Court	Yes
Letters treated as confidential	Yes
Letters discuss character and qualifications	Yes

Example

Example: A nonattorney passes the exam and asks two enrolled agents who are not admitted to the Tax Court to sponsor him.

Result: Not sufficient. Sponsors must be persons admitted to practice before the Tax Court.

E. Periodic Registration Fee and Ineligible List

The Court may impose a periodic registration fee. A practitioner who fails to comply may be placed on the **Ineligible List** and may not commence a case or enter an appearance while on that list.

Exam Point

Being admitted once is not enough. A practitioner must remain eligible and in good standing.

F. Corporations and Firms Cannot Be Admitted

Corporations and firms are not admitted to practice or recognized before the Court.

Example

Example: “ABC Tax Group LLC” files an Entry of Appearance as representative for a taxpayer.

Result: Invalid. A firm or corporation cannot be admitted or recognized. An individual practitioner must appear.

III. Competence

A. ABA Model Rule 1.1 Standard

Competent representation requires:

- Legal knowledge.
- Skill.
- Thoroughness.
- Preparation reasonably necessary for the representation.

B. Tax Court Application

A competent USTCP practitioner should understand:

- Tax Court jurisdiction.
- Petition deadlines.
- Deficiency procedures.
- Burdens of proof.
- Stipulations.
- Discovery.
- Trial preparation.
- Evidence basics.
- Settlement authority.
- Posttrial briefing.
- Ethical obligations under Rule 201.

Competence Table

Competence Area	What It Means in Tax Court	Common Exam Trap
Jurisdiction	Know when Tax Court can hear a case	Filing when Court lacks jurisdiction
Deadlines	Know petition and motion deadlines	Missing deficiency petition deadline
Evidence	Understand admissibility basics	Offering documents without foundation
Tax Law	Know substantive tax issues	Taking case without learning controlling law
Procedure	Know Tax Court Rules	Failing to enter appearance properly
Ethics	Know ABA Model Rules through Rule 201	Treating tax practice as separate from ethics rules

C. Competence and Admission

Rule 200 expressly connects admission to the ability to provide competent representation. Nonattorneys must pass the written examination to show the required qualifications.

Example

Example: A practitioner has experience preparing returns but has never handled litigation, does not know Tax Court Rules, and agrees to represent a taxpayer at trial next week.

Likely Issue: Competence. The practitioner must either become competent through preparation, associate with competent counsel, limit the representation appropriately, or decline.

IV. Diligence

A. ABA Model Rule 1.3 Standard

A lawyer must act with reasonable diligence and promptness in representing a client.

B. Diligence in Tax Court Practice

Diligence requires:

- Prompt review of notices and orders.
- Timely filing of petitions, motions, and responses.
- Preparation for calendar call.
- Timely communication with IRS counsel.
- Meeting stipulation deadlines.
- Preparing evidence before trial.
- Monitoring DAWSON notifications.
- Promptly informing client of major developments.

Diligence Table

Situation	Diligent Conduct	Undiligent Conduct
Notice of deficiency received	Calculate petition deadline immediately	Wait until deadline week
Case set for trial	Prepare stipulations and evidence	Show up at calendar call unprepared
IRS sends settlement offer	Communicate to client promptly	Ignore offer or decide alone
Court issues order	Calendar response date	Miss deadline
Limited appearance ends	File Notice of Completion	Assume representation ended automatically

Example

Example: Practitioner H receives a Court order requiring a status report in 30 days. H is busy and misses the deadline.

Result: Possible diligence violation. Busy practice is not an excuse for missing Court deadlines.

V. Scope of Representation and Client Authority

A. ABA Model Rule 1.2

Under Rule 1.2:

- Client decides the objectives of representation.
- Lawyer consults with client about the means.
- Lawyer may take impliedly authorized actions.
- Lawyer must follow the client's decision whether to settle.
- Lawyer may limit the scope if the limitation is reasonable and the client gives informed consent.

B. Client Controls Settlement

Settlement is the client's decision, not counsel's.

Example

Example: Client tells practitioner, "I will settle for anything under \$20,000." IRS offers \$15,000. Practitioner accepts without calling client.

Exam Answer: Risky and likely improper unless the client clearly gave actual authority to accept that exact type of offer. Rule 1.2 makes settlement the client's decision, and Rule 1.4 requires consultation sufficient for informed decisions.

C. Reasonable Limited Scope

Limited representation is allowed only if:

- The limitation is reasonable under the circumstances.
- The client gives informed consent.
- The limitation does not eliminate competence, diligence, communication, loyalty, or candor duties.

Scope Table

Type of Limitation	Usually Permissible?	Reason
Represent client only at calendar call	Yes, if Tax Court LEA rules are followed	Time/activity-based limitation
Represent client only for motion to continue	Yes, if reasonable and consented to	Specific activity
Represent only “deduction issue” but not “penalty issue” in same Tax Court case	Generally not as Tax Court LEA	LEA cannot be limited to a specific issue under Tax Court FAQ
Avoid all client communication after filing appearance	No	Violates communication and diligence
Agree lawyer may settle without client consent	No	Client controls settlement

VI. General Appearance in Tax Court

A. How Counsel Enters an Appearance

Under Tax Court Rule 24, counsel may enter an appearance by signing and filing:

- The petition or other initial pleading/document.
- An entry of appearance.
- A substitution of counsel.

B. Required Information

A paper used to enter an appearance must include:

- Case name.
- Docket number, if any.
- Counsel’s name.
- Mailing address.
- Email address, if any.
- Telephone number.
- Tax Court bar number.

C. Counsel Not Yet Admitted

An entry of appearance by counsel not admitted to practice before the Court is not effective until counsel is admitted. The Court may recognize counsel in a pending case if counsel can and will be promptly admitted.

Example

Example: A nonattorney passes the USTCP exam but has not completed admission. She files an Entry of Appearance for a taxpayer.

Result: Appearance is not effective until admission is complete.

VII. Representation Without Counsel

A party not represented by counsel may proceed as follows:

Party Type	Who May Represent
Individual	Himself or herself
Corporation	Authorized officer
Unincorporated association	Authorized individual
Estate or trust	Fiduciary

This is allowed under Tax Court Rule 24(b).

Example

Example: A corporation's president, who is not admitted to the Tax Court bar, appears for the corporation.

Result: Rule 24(b) allows an authorized officer to represent the corporation when the corporation is not represented by counsel.

VIII. Limited Entries of Appearance

A. Definition

A Limited Entry of Appearance allows a practitioner admitted and in good standing to limit representation for petitioners in a case set on a scheduled trial session for certain purposes.

B. General vs. Limited Appearance

General Appearance	Limited Entry of Appearance
Not limited in scope or duration	Limited to specific date or activity
Continues until case ends or Court permits withdrawal	Ends after Notice of Completion
Entered by petition, entry of appearance, or substitution	Entered by LEA form
Counsel receives service while appearance is active	Counsel receives service only during LEA period
Withdrawal requires Rule 24 compliance	Early termination requires Court approval

A general entry stays in effect until the proceedings conclude or the Court permits counsel to withdraw, while a limited entry is tied to the specific date or activity and requires a Notice of Completion.

C. Requirements for Limited Appearance

A valid Limited Entry of Appearance requires:

- Practitioner admitted to practice before the Tax Court.
- Practitioner in good standing.
- Informed consent by petitioner.
- Limitation to a specific date or activity.
- Use of the Court's LEA form.
- Electronic filing unless exempt.
- Filing after the Notice Setting Case for Trial and before the trial session concludes.

D. What Limited Appearance Can Cover

Activity	Limited Appearance Required?
Represent petitioner in pretrial conference with Court	Yes
Represent petitioner on a motion before trial session	Yes
Speak to Court on petitioner's behalf	Yes
Request continuance or respond to respondent's motion	Yes
Continue representation into trial session after earlier LEA	Yes, new LEA or general appearance needed
Only talk privately with petitioner, not IRS counsel or Court	No
Talk settlement with IRS counsel while petitioner is present	No, under the Court FAQ table
End limited representation	Yes, file Notice of Completion

The Tax Court FAQ states that a limited entry is required for Court-facing activity, such as speaking to the Court or handling motions, but not merely for private discussion with the petitioner.

E. Limited Appearance Cannot Be Issue-Specific

A limited appearance may be limited by:

- Time period, such as June 1–30.
- Activity, such as calendar call, pretrial conference, or motion.

It may not be limited to a specific issue within the case.

Example

Proper: “I represent petitioner for the calendar call on June 10.”

Improper as LEA: “I represent petitioner only on substantiation of Schedule C expenses but not penalties.”

F. Ending a Limited Appearance

A limited appearance ends after the practitioner files a **Notice of Completion**. The Notice of Completion must be served on all parties. If counsel wants to terminate earlier than the date or activity stated in the LEA, counsel must seek Court approval by motion to withdraw.

Example

Example: Practitioner files an LEA for calendar call only. At the end of calendar call, practitioner files a Notice of Completion.

Result: Representation ends. Going forward, IRS counsel may generally communicate directly with the taxpayer because the limited appearance has concluded.

This mirrors the 2025 released exam's LE-1 fact pattern, which tested whether IRS counsel could communicate directly with the taxpayer after the practitioner filed a Notice of Completion.

IX. Ethical Duties During Limited Appearance

A. Limited Scope Does Not Limit Professional Responsibility

The Tax Court FAQ states that a limited appearance does **not** limit professional responsibilities; practitioners still must comply with the Model Rules, including competence and conflicts rules.

B. Duties Still Apply

Duty	Applies During LEA?	Explanation
Competence	Yes	Must be prepared for the limited task
Diligence	Yes	Must handle the limited task promptly
Communication	Yes	Client must understand limits and consequences
Confidentiality	Yes	Client information remains protected
Conflict rules	Yes	Must check conflicts before appearing
Candor to Court	Yes	Cannot make false statements
Client authority	Yes	Client still controls settlement

Example

Example: A practitioner enters a limited appearance to request a continuance but does not review the docket, the trial notice, or prior orders.

Result: Possible competence and diligence problem. Limited representation still requires preparation for the limited task.

X. Withdrawal and Substitution

A. Withdrawal by Notice

Counsel may withdraw by notice only if:

- More than one counsel appeared for the party.
- At least one counsel will continue.
- The notice is filed no later than 30 days before the first day of the Court's trial session.
- There is no objection.

B. Motion to Withdraw

If those conditions are not met, counsel must file a motion to withdraw.

C. Required Contents

A withdrawal notice or motion must state:

- Prior notice was given to the client or counsel.
- Prior notice was given to other parties or their counsel.
- Whether there is any objection.
- For motions, the party's current mailing address, email if any, and telephone number.

Exam Tip

Do not say counsel may simply "stop representing" a client. Tax Court appearance continues until the case ends, withdrawal is permitted, substitution occurs, or a limited appearance is completed properly.

XI. Course Teaching Examples

Example 1 — Admission

Facts: B prepared taxpayer's return. Taxpayer files a Tax Court petition and asks B to represent him. B is not admitted to practice before the Tax Court.

Answer: B cannot appear as counsel unless admitted or promptly admitted and recognized by the Court. Return preparation alone does not authorize Tax Court representation. Rule 24 makes an appearance by unadmitted counsel ineffective until admission.

Example 2 — Competence

Facts: Practitioner agrees to try a valuation case but has no experience with expert reports, burden of proof, stipulations, or evidence.

Answer: Practitioner must become competent through study/preparation or associate with competent counsel. Otherwise, accepting the matter risks violating Rule 1.1.

Example 3 — Diligence

Facts: Practitioner receives a DAWSON order requiring a response in 21 days. Practitioner misses the deadline because of a busy tax season.

Answer: Likely diligence issue. Rule 1.3 requires reasonable diligence and promptness.

Example 4 — Scope and Settlement

Facts: Client says, "Try to settle low." IRS offers a settlement. Practitioner accepts without asking client.

Answer: Improper unless client gave actual authority. Settlement belongs to the client under Rule 1.2.

Example 5 — Limited Appearance

Facts: Practitioner appears at calendar call under an LEA, requests a continuance, then files Notice of Completion.

Answer: Representation ends after Notice of Completion. Future service on the practitioner is not required, and IRS counsel may generally communicate directly with the taxpayer.

XII. High-Yield Exam Checklist

Before answering any USTCP ethics question on this subtopic, apply this checklist:

Question	Why It Matters
Is the person admitted to practice before the Tax Court?	Required for counsel appearance
Is the person in good standing?	Required for LEA and general practice
Was a valid appearance filed?	Determines counsel status
Is the appearance general or limited?	Determines duration and communication rules
Was informed consent obtained?	Required for limited scope
Is the limitation reasonable?	Required by ABA Rule 1.2(c)
Did counsel file Notice of Completion?	Ends limited appearance
Is counsel competent for the task?	Required by Rule 1.1
Did counsel act promptly?	Required by Rule 1.3
Did counsel communicate enough for informed decisions?	Required by Rule 1.4
Is settlement involved?	Client controls settlement
Is withdrawal needed?	Court permission may be required

XIII. Suggested Course Flow

Lesson Segment	Content	Skills Tested
1. Admission Framework	Rule 200; attorney vs. nonattorney applicants; sponsors; good standing	Identify who may practice
2. Entering an Appearance	Rule 24 general appearance; required information; unadmitted counsel	Determine valid appearance
3. Competence	Rule 1.1; Tax Court litigation readiness	Spot competence problems
4. Diligence	Rule 1.3; deadlines, orders, trial preparation	Spot neglect and delay
5. Scope and Authority	Rule 1.2; settlement; limited representation	Separate client vs. lawyer decisions
6. Limited Entry of Appearance	LEA form, timing, Notice of Completion, limits	Apply 2025-style LEA facts
7. Withdrawal/Substitution	Rule 24(c) and (d)	Know when Court permission is needed
8. Practice Scenarios	Mixed admission, competence, diligence, and LEA hypotheticals	Write exam-ready answers

Bottom-Line Rule Statement for Students

A Tax Court practitioner must be admitted and in good standing, enter a valid appearance under Rule 24, practice according to the ABA Model Rules through Tax Court Rule 201, provide competent and diligent representation, respect the client's authority over objectives and settlement, and use limited appearances only when reasonable, consented to, properly filed, and completed by Notice of Completion.

Current-Client Conflicts and Joint Representation

I. Course Purpose

This module teaches students how to identify, analyze, and resolve current-client conflicts and joint-representation issues in U.S. Tax Court practice.

The USTCP exam may test conflicts through short fact patterns involving:

- Spouses filing a joint Tax Court petition.
 - Business owners and their entities.
 - Multiple partners, shareholders, or family members.
 - A practitioner who previously advised on or promoted the transaction at issue.
 - A taxpayer and another person whose interests may diverge.
 - Settlement offers involving multiple petitioners.
 - Third-party payment of legal fees.
 - A practitioner's personal or financial interest in the matter.
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II. Governing Rules

A. Key Ethics Rules

Authority	Rule	Core Point
Tax Court Rule 201	Conduct before the Court	Tax Court practitioners must follow the letter and spirit of the ABA Model Rules of Professional Conduct.
Tax Court Rule 24(g)	Limitations on representation	Counsel with a conflict involving a related transaction/entity or multiple persons with differing interests must obtain informed written consent, withdraw, or otherwise cure the conflict.
ABA Model Rule 1.7	Current-client conflicts	A lawyer may not represent a client if there is a concurrent conflict unless the conflict is consentable and each affected client gives informed consent confirmed in writing.
ABA Model Rule 1.8(f)	Third-party payment	A lawyer may accept payment from someone other than the client only if the client consents, independence is protected, and confidentiality is preserved.
ABA Model Rule 1.8(g)	Aggregate settlements	A lawyer representing two or more clients cannot participate in an aggregate settlement unless each client gives informed consent in a signed writing after full disclosure.
ABA Model Rule 1.6	Confidentiality	A lawyer must protect information relating to representation, including during joint representation.
ABA Model Rule 1.4	Communication	A lawyer must explain conflict risks so the client can make an informed decision.
ABA Model Rule 1.16	Withdrawal	If a conflict becomes nonconsentable or unresolved, withdrawal may be required.

III. Core Definitions

A. Current-Client Conflict

A current-client conflict exists when:

1. The representation of one client is directly adverse to another current client; or
 2. There is a significant risk that representation of one or more clients will be materially limited by:
 - Duties to another client;
 - Duties to a former client;
 - Duties to a third person; or
 - The practitioner's own personal interest.
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B. Direct Adversity

Direct adversity occurs when the practitioner would be acting against one current client while representing another.

Examples

- Practitioner represents Taxpayer A in one Tax Court case and wants to represent Taxpayer B against A in another matter.
 - Practitioner represents both spouses, but one spouse wants to claim innocent spouse relief, which shifts liability away from that spouse and may leave the other spouse responsible.
 - Practitioner represents a corporation and also represents a shareholder in a case where the IRS asserts constructive dividends from the corporation to the shareholder.
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C. Material Limitation

A material limitation conflict exists even if the clients are not directly adverse, when the practitioner's ability to give independent advice may be limited.

Examples

- Practitioner represents both spouses in a joint deficiency case, but one spouse gave the practitioner information showing the other spouse may have underreported income.
- Practitioner represents several partners in a partnership dispute where penalties may depend on each partner's knowledge, reliance, or participation.
- Practitioner represents a taxpayer while also having a financial relationship with the person who promoted the tax shelter at issue.

IV. Current-Client Conflict Analysis

A. Four-Step Exam Method

Use this structure on USTCP exam questions:

Step	Question	Purpose
1	Who are the clients?	Identify each person or entity the practitioner represents.
2	Is there direct adversity or material limitation?	Determine whether a current-client conflict exists.
3	Is the conflict consentable?	Decide whether representation may continue with proper consent.
4	Was informed consent obtained and confirmed in writing?	Confirm whether the practitioner satisfied the rule.

B. Conflict Analysis Checklist

A practitioner should ask:

- Do I represent more than one person in this case?
- Do the clients have the same legal position?
- Could one client's best defense hurt another client?
- Could one client blame another client?
- Could one client seek relief that increases exposure for another client?
- Did I plan, promote, or operate a transaction or entity involved in the case?
- Is a third party paying my fee?
- Do I have a personal financial interest that could affect my judgment?
- Can I provide competent and diligent representation to each client?
- Is informed consent required?
- Is the conflict nonconsentable?

V. Consentable vs. Nonconsentable Conflicts

A. Consentable Conflict

A conflict may be consentable if:

- The practitioner reasonably believes competent and diligent representation can be provided to each affected client.
 - The representation is not prohibited by law.
 - The clients are not asserting claims against each other in the same proceeding.
 - Each affected client gives informed consent confirmed in writing.
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B. Nonconsentable Conflict

A conflict is nonconsentable when the practitioner cannot reasonably represent all affected clients competently, diligently, and loyally.

Nonconsentable Conflict Examples

Situation	Why It Is Likely Nonconsentable
One spouse wants innocent spouse relief against the other spouse	The spouses' interests are directly adverse.
One client must testify against another client represented by the same practitioner	Loyalty and confidentiality problems are severe.
One client's best defense is blaming another current client	Practitioner cannot advocate fully for both.
Clients are asserting claims against each other in the same Tax Court matter	Same-proceeding adversity is not allowed under Rule 1.7.
Practitioner's own role in promoting the tax transaction is central to the case	Practitioner may be personally interested and possibly a witness.

VI. Joint Representation

A. Definition

Joint representation occurs when one practitioner represents two or more clients in the same or related matter.

Common Tax Court examples include:

- Husband and wife.
 - Parent and child.
 - Business entity and owner.
 - Multiple partners.
 - Multiple shareholders.
 - Fiduciary and estate.
 - Taxpayer and responsible officer.
 - Taxpayer and return preparer.
 - Promoter and investor.
 - Related corporations.
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B. Joint Representation Is Not Automatically Improper

Joint representation may be proper when:

- The clients' interests are aligned.
 - No direct adversity exists.
 - No significant material limitation exists.
 - The practitioner can remain loyal, independent, competent, and diligent for each client.
 - Each affected client gives informed consent confirmed in writing when required.
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C. Joint Representation Is Risky in Tax Court

Tax Court cases often create diverging interests because:

- Liability may be allocated differently among parties.
- Penalties may depend on each person's knowledge, conduct, or reliance.
- One party may benefit by blaming another.
- One spouse may seek innocent spouse relief.
- One business owner may have facts different from another.
- Settlement may affect clients differently.
- Confidential information from one client may be relevant to another client.

VII. Joint Representation Table

Joint Representation Scenario	Conflict Risk	Exam Analysis
Married taxpayers both dispute the same deficiency	Low to moderate	Usually permissible if interests remain aligned.
One spouse wants innocent spouse relief	High	Likely direct adversity; separate counsel may be required.
Corporation and shareholder both involved in constructive dividend issue	High	Entity may want to deny benefit to shareholder; shareholder may blame entity.
Partnership and individual partners	Moderate to high	Partners may have different knowledge, basis, participation, or penalty defenses.
Parent and child in family business case	Moderate	Family unity does not eliminate legal conflict.
Taxpayer and return preparer	High	Taxpayer may blame preparer; preparer may defend own conduct.
Multiple investors in same tax shelter	High	Each may have different reliance, knowledge, and penalty defenses.
Estate and beneficiary	Moderate to high	Fiduciary duties and distribution interests may diverge.

VIII. Informed Consent

A. Meaning of Informed Consent

Informed consent means the client understands:

- The nature of the conflict.
 - The risks of joint representation.
 - How the conflict could affect loyalty.
 - How the conflict could affect confidentiality.
 - How the conflict could affect settlement.
 - The right to seek independent counsel.
 - Possible need for withdrawal if conflict worsens.
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B. Confirmed in Writing

For Rule 1.7 conflicts, informed consent must be confirmed in writing.

A written confirmation should identify:

- The clients represented.
 - The matter involved.
 - The potential or actual conflict.
 - The risks and alternatives.
 - The effect on confidentiality.
 - The effect on settlement.
 - The client's right to independent counsel.
 - The client's consent.
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C. Consent Is Not a Cure for Every Conflict

Even if all clients agree, consent is not enough if:

- The practitioner cannot reasonably provide competent and diligent representation to each client.
 - The representation is prohibited by law.
 - The clients are asserting claims against each other in the same proceeding.
 - The conflict is too severe for loyalty and independent judgment to remain intact.
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IX. Confidentiality Problems in Joint Representation

A. Core Issue

In joint representation, information received from one jointly represented client may be relevant to the other client. The practitioner must explain at the start whether information will be shared among the joint clients.

B. Exam Trap

A client may tell the practitioner something confidential that harms the other joint client.

Example

Husband and Wife jointly hire Practitioner for a Tax Court case. Husband privately tells Practitioner that he hid income from Wife and the IRS. Wife does not know.

Ethical Issue

Practitioner now has a confidentiality and loyalty problem. Practitioner may not be able to continue representing both spouses because the information is material to Wife's representation.

C. Best Practice

Before joint representation begins, the practitioner should explain:

- Whether there will be “no secrets” between joint clients.
 - Whether material information from one client must be shared with the other.
 - What will happen if one client gives confidential information adverse to another.
 - That withdrawal may be required if conflicts arise.
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X. Third-Party Payment of Fees

A. Rule

A practitioner may accept payment from someone other than the client only if:

- The client gives informed consent.
- The third-party payer does not interfere with the practitioner's independent judgment.
- The practitioner protects client confidentiality.

B. Tax Court Examples

Fee Payer	Client	Risk
Parent pays for adult child's Tax Court case	Adult child	Parent may try to control strategy.
Corporation pays shareholder's legal fees	Shareholder	Corporation may want strategy that protects entity.
Promoter pays investor's legal fees	Investor	Promoter may want to avoid facts showing abusive promotion.
Employer pays responsible officer's fees	Officer	Employer may want to protect itself from blame.

C. Exam Rule

Payment does not make the fee payer the client.

The practitioner's duties belong to the client, not the person paying the bill.

XI. Aggregate Settlements

A. Definition

An aggregate settlement occurs when a lawyer represents two or more clients and participates in a settlement that resolves claims involving multiple clients together.

B. Required Consent

For an aggregate settlement, each client must give informed consent in a signed writing after full disclosure.

The disclosure should include:

- Total settlement terms.
 - How the settlement affects each client.
 - How liability or payment is allocated.
 - Whether one client receives better treatment than another.
 - The participation of each person in the settlement.
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C. Tax Court Example

Practitioner represents Husband and Wife. IRS offers to settle the case by allocating most of the deficiency to Husband and reducing penalties for Wife.

Analysis

This settlement affects the clients differently. Practitioner cannot simply accept for both clients without full disclosure and signed written consent from each affected client.

XII. Tax Court Rule 24(g) Conflict Situations

A. Planning or Promoting a Transaction

A practitioner has a Tax Court-specific conflict concern if the practitioner was involved in:

- Planning the transaction at issue.
- Promoting the transaction at issue.
- Operating an entity connected to an issue in the case.

Example

Practitioner advised several clients to enter a conservation easement transaction. The IRS later challenges the deductions. The same practitioner wants to represent the taxpayers in Tax Court.

Issue

The practitioner may have a personal interest conflict because defending the taxpayers may require defending the practitioner's own advice or conduct.

B. Operating an Entity Connected to the Case

Example

Practitioner helped operate an LLC that issued tax documents to investors. The IRS challenges the investors' losses. Practitioner wants to represent the investors.

Issue

The practitioner's role in the entity may materially limit independent judgment. The practitioner may also become a witness.

C. Representing More Than One Person With Differing Interests

Example

Practitioner represents two shareholders. The IRS asserts constructive dividends, but one shareholder claims the other shareholder received the disputed funds.

Issue

The shareholders have differing interests. Practitioner must obtain informed written consent, withdraw, or otherwise cure the conflict.

XIII. Business Entity and Owner Conflicts

A. Entity Is a Separate Client

A practitioner representing a corporation, partnership, or LLC does not automatically represent each owner.

B. Exam Trap

Students often assume that because an owner controls the entity, the practitioner represents both the entity and the owner.

That is not automatically true.

C. Entity-Owner Conflict Examples

Scenario	Conflict
IRS says corporation paid personal expenses for shareholder	Corporation may deny benefit; shareholder may defend deduction or deny income.
IRS asserts constructive dividends	Corporation and shareholder may have different positions.
Partnership penalties depend on each partner's conduct	Partners may blame each other.
S corporation basis issue affects shareholder deductions	Entity records and shareholder position may diverge.
Trust or estate tax dispute affects fiduciary and beneficiary	Fiduciary may defend administration; beneficiary may challenge it.

XIV. Spousal Representation Conflicts

A. Joint Petition Does Not Always Mean Joint Interest

Spouses often have aligned interests at the start of a Tax Court case, but conflicts may arise.

B. Common Spousal Conflict Triggers

- Innocent spouse relief.
 - Separate income items.
 - Hidden bank accounts.
 - One spouse handled the business.
 - One spouse relied on the other.
 - One spouse wants settlement and the other wants trial.
 - Divorce or separation.
 - Allocation of deficiency or penalties.
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C. Spousal Conflict Table

Facts	Conflict Level	Reason
Spouses jointly deny IRS adjustment	Low	Same objective.
Spouses disagree about settlement	Moderate	Strategy and authority may diverge.
One spouse seeks innocent spouse relief	High	Relief may shift burden to other spouse.
One spouse secretly omitted income	High	Confidentiality and loyalty conflict.
Spouses are divorcing during Tax Court case	Moderate to high	Financial interests may diverge.

XV. Taxpayer and Return Preparer Conflicts

A. Common Problem

A taxpayer may blame the return preparer to avoid penalties. The preparer may want to defend the accuracy of the return.

B. Example

Practitioner represents both Taxpayer and Return Preparer. IRS asserts penalties. Taxpayer's best defense is reasonable reliance on the preparer. Preparer's best defense is that Taxpayer gave incomplete information.

Analysis

The clients' positions are directly adverse or materially limited. Joint representation is likely improper.

XVI. Promoter, Advisor, and Investor Conflicts

A. High-Risk Area

Tax shelter, conservation easement, micro-captive, syndicated investment, and similar cases often create conflict issues.

B. Why Conflicts Arise

The taxpayer may need to show:

- Reliance on professional advice.
- Lack of knowledge.
- Reasonable cause.
- Good faith.
- No participation in promotion.
- No intent to avoid tax improperly.

The promoter or advisor may want to avoid facts showing bad advice, improper promotion, or lack of due diligence.

C. Example

Practitioner promoted a transaction to Investor. IRS disallows Investor's deductions and asserts penalties. Practitioner wants to represent Investor in Tax Court.

Analysis

Practitioner may be personally interested in defending the original advice. Practitioner's judgment may be materially limited. Practitioner may also be a witness.

XVII. Client Consent and Independent Counsel

A. When to Recommend Independent Counsel

A practitioner should recommend independent counsel when:

- Clients' interests may diverge.
 - One client may blame another.
 - A settlement affects clients differently.
 - A client is asked to waive a conflict.
 - A spouse seeks relief from joint liability.
 - Practitioner's personal conduct is involved.
 - One client is less sophisticated than another.
-

B. Exam Language

Use clear language:

“The practitioner may continue only if the conflict is consentable, the practitioner reasonably believes competent and diligent representation can be provided to each affected client, and each affected client gives informed consent confirmed in writing. If the conflict is nonconsentable, the practitioner must decline or withdraw.”

XVIII. Withdrawal When Conflict Develops

A. Conflict Can Arise After Representation Begins

A representation may begin ethically but become conflicted later.

Examples:

- One spouse requests innocent spouse relief.
 - One client reveals damaging confidential information.
 - IRS offers settlement favoring one client.
 - One business owner blames another.
 - Practitioner discovers personal involvement in the transaction.
 - Clients begin asserting inconsistent positions.
-

B. Required Response

When a conflict develops, the practitioner must:

1. Stop and identify the affected clients.
 2. Determine whether the conflict is consentable.
 3. Communicate the risks.
 4. Obtain informed consent confirmed in writing if representation may continue.
 5. Withdraw if the conflict cannot be cured.
 6. Protect confidentiality after withdrawal.
-

XIX. Exam Examples

Example 1 — Spouses With Same Position

Facts

Husband and Wife file a joint Tax Court petition. Both deny the IRS adjustment and both want the same result.

Answer

Joint representation may be permissible if their interests remain aligned and no material limitation exists. The practitioner should still explain the risks of joint representation.

Example 2 — Innocent Spouse Relief

Facts

Husband and Wife jointly retain Practitioner. Wife later wants innocent spouse relief, claiming Husband controlled the business and hid income.

Answer

This creates a serious current-client conflict. Wife's position may be adverse to Husband. Practitioner likely cannot represent both spouses and may need to withdraw from one or both representations.

Example 3 — Entity and Owner

Facts

Practitioner represents Corporation and Shareholder. IRS asserts that Corporation paid Shareholder's personal expenses, creating constructive dividend income to Shareholder.

Answer

A conflict may exist because Corporation and Shareholder may have different positions. Corporation may deny improper payments, while Shareholder may argue the payments were business expenses or not income. Practitioner must analyze whether the conflict is consentable.

Example 4 — Multiple Investors

Facts

Practitioner represents three investors in the same challenged tax shelter. Investor A relied entirely on the promoter. Investor B helped market the transaction. Investor C ignored warnings.

Answer

Joint representation is risky because penalty defenses differ. Practitioner may be materially limited in advocating each investor's best position.

Example 5 — Third-Party Payment

Facts

A promoter offers to pay Practitioner to represent taxpayers who invested in the promoter's transaction.

Answer

Payment by the promoter does not make the promoter the client. Practitioner must obtain the taxpayers' informed consent, protect independence, preserve confidentiality, and evaluate whether the promoter's payment creates a material limitation conflict.

Example 6 — Aggregate Settlement

Facts

IRS offers one settlement resolving the cases of four related taxpayers. The settlement gives one taxpayer a much better result than the others.

Answer

Practitioner cannot participate in the aggregate settlement unless each client gives informed consent in a signed writing after full disclosure of the settlement terms and each client's participation.

Example 7 — Practitioner Promoted Transaction

Facts

Practitioner designed a tax strategy and sold it to clients. IRS challenges the strategy in Tax Court. Practitioner wants to represent the clients.

Answer

Practitioner's personal interest may materially limit representation. Practitioner may also be a witness. Under Tax Court conflict rules, counsel must obtain informed written consent, withdraw, or take other steps to cure the conflict.

XX. High-Yield Exam Tables

A. Conflict Identification Table

Question	If Yes, What to Discuss
Are there two or more clients?	Joint representation and possible material limitation.
Is one client adverse to another?	Direct adversity.
Could one client blame another?	Likely nonconsentable conflict.
Could settlement affect clients differently?	Aggregate settlement and informed consent.
Is a third party paying the fee?	Rule 1.8(f), independence, confidentiality.
Did practitioner promote the transaction?	Personal interest conflict and possible witness issue.
Is one client seeking innocent spouse relief?	Spousal direct adversity.
Are clients in the same case asserting claims against each other?	Nonconsentable conflict.
Is confidential information from one client harmful to another?	Confidentiality and withdrawal problem.

B. Consentability Table

Conflict Type	Usually Consentable?	Reason
Aligned spouses disputing same IRS adjustment	Often yes	No direct adversity if positions remain aligned.
Spouses where one seeks innocent spouse relief	Usually no	One spouse's position may harm the other.
Taxpayer and return preparer in penalty case	Usually no	Taxpayer may blame preparer.
Entity and owner with constructive dividend issue	Depends	May be consentable early, but often becomes adverse.
Multiple investors with identical facts	Possibly	Consent may work if defenses are truly aligned.
Multiple investors with different knowledge and reliance	Often no	Penalty defenses differ.
Promoter paying taxpayer's fees	Depends	Must protect independence and confidentiality.
Practitioner promoted transaction under attack	Often high risk	Personal interest and witness issues.

C. Joint Representation Warning Table

Warning Sign	What It Means
"I did not know what my spouse was doing."	Innocent spouse or reliance conflict.
"My business partner handled everything."	Partner conflict.
"The preparer made the mistake."	Taxpayer-preparer conflict.
"The promoter said it was legal."	Promoter-investor conflict.
"Settle my part, not theirs."	Aggregate settlement or divergent objectives.
"Do not tell the other client."	Confidentiality crisis in joint representation.
"I paid the fee, so I control the case."	Third-party payer interference.

XXI. Student Rule Statements

A. Short Rule Statement

A current-client conflict exists when one client's representation is directly adverse to another current client or when there is a significant risk that representation will be materially limited by duties to another client, a former client, a third person, or the practitioner's own interests.

B. Consent Rule Statement

A practitioner may continue despite a current-client conflict only if the conflict is consentable, the practitioner reasonably believes competent and diligent representation can be provided to each affected client, the representation is not prohibited by law, the clients are not asserting claims against each other in the same proceeding, and each affected client gives informed consent confirmed in writing.

C. Tax Court Rule 24(g) Statement

In a Tax Court case, if counsel was involved in planning or promoting a transaction, operating an entity connected to an issue in the case, or representing more than one person with differing interests, counsel must obtain informed written consent, withdraw, or take other steps necessary to cure the conflict.

D. Joint Representation Statement

Joint representation is not automatically improper, but it requires careful conflict analysis because each client is entitled to loyal, independent, competent, and diligent representation.

E. Aggregate Settlement Statement

When one practitioner represents multiple clients, the practitioner may not participate in an aggregate settlement unless each client gives informed consent in a signed writing after full disclosure of the nature of the claims and each person's participation in the settlement.

XXII. Practice Questions for Class Discussion

Question 1

Practitioner represents Husband and Wife in a joint deficiency case. Wife tells Practitioner she wants to argue she had no knowledge of Husband's business income.

Discussion Point

Does this create direct adversity or material limitation?

Question 2

Practitioner represents a corporation and its sole shareholder. IRS asserts constructive dividends to the shareholder.

Discussion Point

Can Practitioner continue representing both?

Question 3

A promoter pays Practitioner to represent investors in Tax Court.

Discussion Point

Who is the client, and what consents are needed?

Question 4

IRS offers a single settlement covering four clients represented by the same practitioner.

Discussion Point

What must the practitioner disclose before settlement?

Question 5

Practitioner promoted the transaction that the IRS now challenges.

Discussion Point

Is this a personal interest conflict, a witness problem, or both?

XXIII. Exam Attack Outline

When answering a USTCP legal ethics conflict question:

1. Identify each client.
 2. Determine whether the conflict is direct adversity or material limitation.
 3. Identify any Tax Court-specific Rule 24(g) issue.
 4. Decide whether the conflict is consentable.
 5. State whether informed consent confirmed in writing is required.
 6. Address confidentiality problems.
 7. Address third-party payment if someone else pays the fee.
 8. Address aggregate settlement if multiple clients settle together.
 9. State whether withdrawal is required.
 10. Conclude clearly.
-

XXIV. Bottom-Line Rule

In U.S. Tax Court practice, current-client conflicts and joint representation must be handled with strict attention to loyalty, independent judgment, confidentiality, and informed written consent. A practitioner may not represent clients with directly adverse or materially limited interests unless the conflict is consentable and each affected client gives proper informed written consent. If the conflict cannot be cured, the practitioner must decline or withdraw.

Former-Client and Imputed Conflicts

I. Course Purpose

This module teaches students how to identify and analyze former-client conflicts and imputed conflicts in U.S. Tax Court practice.

This topic is important because USTCP ethics questions often test whether a practitioner may represent a taxpayer when the practitioner, the practitioner's firm, or a former firm has prior involvement with:

- The taxpayer.
 - The taxpayer's spouse.
 - A business entity.
 - A shareholder, partner, member, or fiduciary.
 - A promoter or advisor.
 - A tax shelter or listed transaction.
 - An IRS matter.
 - A related Tax Court case.
 - A prior audit, appeal, collection matter, or return-preparation matter.
-

II. Governing Rules

A. Key Authorities

Authority	Subject	Core Rule
Tax Court Rule 201	Conduct before the Court	Tax Court practitioners must follow the letter and spirit of the ABA Model Rules of Professional Conduct.
Tax Court Rule 24(g)	Limitations on representation	Counsel may need informed written consent, withdrawal, or other corrective action when conflicts exist.
ABA Model Rule 1.9(a)	Former-client conflict	A practitioner may not represent a new client against a former client in the same or substantially related matter if the interests are materially adverse, unless the former client gives informed consent confirmed in writing.
ABA Model Rule 1.9(b)	Former firm conflict	A practitioner may be conflicted by information learned at a former firm.
ABA Model Rule 1.9(c)	Use or disclosure of former-client information	A practitioner may not use or reveal former-client information to the former client's disadvantage unless allowed by the rules or the information is generally known.
ABA Model Rule 1.10	Imputed conflicts	Conflicts of one lawyer may be attributed to the entire firm unless an exception applies.
ABA Model Rule 1.11	Government lawyer conflicts	Special rules apply to former and current government lawyers.
ABA Model Rule 1.6	Confidentiality	Protects information relating to representation.
ABA Model Rule 1.7	Current-client conflicts	Relevant because imputed conflicts may arise from current-client conflicts as well.
ABA Model Rule 1.16	Withdrawal	Withdrawal may be required if conflict rules prohibit continued representation.

III. Core Definitions

A. Former Client

A former client is a person or entity the practitioner previously represented.

Examples:

- A taxpayer previously represented in an IRS audit.
- A spouse previously represented in a joint return matter.
- A corporation previously represented in a payroll tax dispute.
- A partnership previously represented in a partnership-level tax issue.
- A shareholder previously represented in a constructive dividend case.
- A promoter previously represented in connection with a tax strategy.

B. New Client

A new client is the person the practitioner now wants to represent.

Examples:

- A shareholder suing or blaming a corporation the practitioner previously represented.
 - A spouse now seeking innocent spouse relief against a former spouse the practitioner previously represented.
 - An investor challenging a promoter whom the practitioner formerly represented.
 - A taxpayer blaming a return preparer whom the practitioner formerly represented.
-

C. Same Matter

A same matter is the exact matter or proceeding previously handled.

Examples:

- Same Tax Court docket.
 - Same IRS audit.
 - Same deficiency year.
 - Same transaction.
 - Same penalty determination.
 - Same conservation easement transaction.
 - Same partnership adjustment.
 - Same innocent spouse claim.
-

D. Substantially Related Matter

A substantially related matter is not necessarily identical, but it is close enough that confidential information from the prior representation could materially help the new client or harm the former client.

Factors:

- Same transaction.
 - Same tax years.
 - Same parties.
 - Same business entity.
 - Same legal theory.
 - Same documents.
 - Same IRS examination.
 - Same return position.
 - Same penalty defense.
 - Same confidential facts.
-

E. Material Adversity

Material adversity means the new client's position is meaningfully opposed to the former client's interests.

Examples:

- New client blames former client.
 - New client seeks to shift liability to former client.
 - New client attacks the validity of former client's transaction.
 - New client uses facts learned from former client.
 - New client seeks settlement terms harmful to former client.
 - New client challenges advice or documents prepared for former client.
-

F. Imputed Conflict

An imputed conflict occurs when one practitioner's conflict is treated as a conflict for other practitioners in the same firm.

Example:

Practitioner A formerly represented Taxpayer X in a tax shelter matter. Practitioner B, who works in the same firm as Practitioner A, now wants to represent Taxpayer Y against Taxpayer X in the same transaction. Practitioner A's conflict may be imputed to Practitioner B and the firm.

IV. Former-Client Conflict Rule

A. General Rule

A practitioner may not represent a new client against a former client when all three elements are present:

1. The practitioner formerly represented the first client.
2. The new matter is the same or substantially related to the prior matter.
3. The new client's interests are materially adverse to the former client.

If all three exist, representation is prohibited unless the former client gives informed consent confirmed in writing.

B. Former-Client Conflict Table

Element	Meaning	Exam Question
Former representation	Practitioner previously represented a person or entity	Was there an attorney-client or practitioner-client relationship?
Same or substantially related matter	Prior and new matters overlap factually or legally	Could confidential information from the old matter be useful in the new matter?
Material adversity	New client's position harms or opposes former client	Is the new client blaming, attacking, or shifting liability to the former client?
No informed written consent	Former client did not waive conflict	Did the former client consent after full disclosure?

V. Former-Client Conflict Analysis Method

Use this exam method:

Step 1: Identify the Former Client

Ask:

- Who did the practitioner previously represent?
- Was the prior client an individual, entity, spouse, partner, shareholder, fiduciary, promoter, or return preparer?
- Was representation direct or through a firm?

Step 2: Identify the New Client

Ask:

- Who does the practitioner now want to represent?
- Is the new client adverse to the former client?
- Is the new client trying to avoid liability by blaming the former client?

Step 3: Compare the Matters

Ask:

- Is it the same Tax Court case?
- Is it the same IRS audit?
- Is it the same tax year?
- Is it the same transaction?
- Is it the same return position?
- Is it the same entity?
- Is it the same penalty issue?
- Could confidential information from the prior matter help the new client?

Step 4: Determine Material Adversity

Ask:

- Would the new representation attack the former client?
- Would the practitioner cross-examine the former client?
- Would the practitioner use former-client facts against the former client?
- Would the practitioner argue the former client caused the tax problem?
- Would the settlement disadvantage the former client?

Step 5: Determine Whether Consent Is Possible

Ask:

- Is the conflict consentable?
 - Has the former client given informed consent confirmed in writing?
 - Can the practitioner protect former-client confidentiality?
 - Can the practitioner provide competent and loyal representation to the new client?
-

VI. Same or Substantially Related Matters

A. Same Matter Examples

Prior Representation	New Representation	Result
Represented taxpayer in IRS audit for 2022 deficiency	Wants to represent spouse in Tax Court case arising from same 2022 deficiency	Same or substantially related
Represented corporation in payroll tax investigation	Wants to represent officer blaming corporation for trust fund taxes	Substantially related
Represented promoter in tax shelter planning	Wants to represent investor attacking promoter's advice	Substantially related
Represented partnership in conservation easement transaction	Wants to represent partner claiming partnership misled him	Substantially related
Represented return preparer regarding preparation of taxpayer's return	Wants to represent taxpayer arguing preparer caused penalties	Substantially related

B. Not Necessarily Substantially Related

Prior Representation	New Representation	Possible Result
Prepared a simple unrelated tax return years ago	Represents another taxpayer in unrelated Tax Court case	Usually not substantially related
Represented taxpayer in unrelated employment tax matter	Represents different taxpayer in unrelated charitable deduction case	Usually not substantially related
Represented shareholder on unrelated estate planning	Represents corporation in unrelated deficiency case	Depends on confidential information
Represented taxpayer in old audit for unrelated years and issues	Represents adverse taxpayer in different transaction	Depends on overlap

C. Exam Tip

Do not automatically assume every prior tax representation creates a conflict.

The key question is whether the new matter is the same or substantially related and whether the new client's interests are materially adverse to the former client.

VII. Material Adversity in Tax Court

A. Common Material Adversity Triggers

Material adversity often appears when the new client says:

- “The former client caused the problem.”
 - “The former client gave me bad advice.”
 - “The former client hid income.”
 - “The former client controlled the business.”
 - “The former client prepared the return incorrectly.”
 - “The former client should be liable, not me.”
 - “I relied on the former client.”
 - “The IRS should pursue the former client instead.”
-

B. Material Adversity Table

Tax Court Situation	Why It May Be Materially Adverse
Innocent spouse relief against former spouse	New client may shift blame or liability to former spouse.
Taxpayer blames former return preparer	New client may attack former client's competence or honesty.
Investor attacks promoter	New client may claim former client misled investors.
Shareholder blames corporation	New client may attack entity's records or conduct.
Officer blames employer	New client may shift responsibility for payroll tax issues.
Partner blames partnership representative	New client may attack prior tax reporting or disclosures.
Beneficiary challenges fiduciary	New client may attack fiduciary's administration or tax reporting.

VIII. Former-Client Confidentiality

A. General Rule

A practitioner may not use or reveal information relating to the prior representation to the disadvantage of the former client unless permitted by the ethics rules or the information has become generally known.

B. Confidential Information May Include

- Prior settlement positions.
- Weaknesses in the former client’s case.
- Unfiled documents.
- Internal business records.
- Mental impressions.
- Financial details.
- Reliance facts.
- Penalty defense facts.
- Communications with IRS counsel.
- Litigation strategy.
- Witness preparation.
- Privileged communications.
- Nonpublic ownership or control facts.

C. Former-Client Confidentiality Table

Information	Can Practitioner Use Against Former Client?	Reason
Public Tax Court opinion	Usually yes	Generally known/public.
Public docket filing	Usually yes	Publicly available.
Confidential settlement discussion	No	Former-client confidential information.
Former client’s private financial records	No	Protected information.
Former client’s litigation strategy	No	Protected information.
Facts learned only through prior representation	No	Protected information.
General tax knowledge gained from experience	Yes	Not client-specific confidential information.

IX. Informed Consent Confirmed in Writing

A. Meaning

Informed consent means the former client understands:

- The nature of the former-client conflict.
 - The identity of the new client.
 - The new client's adverse position.
 - The connection between the old and new matters.
 - The risk that confidential information may be relevant.
 - The possible harm to the former client.
 - The former client's right to refuse consent.
 - The right to seek independent advice.
-

B. Confirmed in Writing

The consent must be confirmed in writing.

A proper written consent should include:

- Former client's name.
 - New client's name.
 - Description of prior matter.
 - Description of new matter.
 - Explanation of adversity.
 - Explanation of confidentiality protections.
 - Explanation of risks.
 - Former client's voluntary consent.
-

C. Consent Does Not Allow Misuse of Confidential Information

Even if a former client consents to the new representation, the practitioner must still protect confidential information unless the consent specifically permits use or disclosure.

X. Former Firm Conflicts

A. Rule

A practitioner may be prohibited from representing a new client if:

- The practitioner's former firm represented a client;
- The new client's interests are materially adverse to that former firm client;
- The new matter is the same or substantially related; and
- The practitioner acquired protected information that is material to the new matter.

B. Former Firm Example

Facts

Practitioner worked at Firm A. Firm A represented Corporation in a Tax Court case involving constructive dividends. Practitioner worked on the case and learned confidential facts. Practitioner later joins Firm B. A shareholder asks Practitioner to represent him against Corporation in a related constructive dividend dispute.

Analysis

Practitioner likely has a former-firm conflict because Practitioner acquired material confidential information at Firm A. Practitioner may not represent the shareholder unless the former client gives informed consent confirmed in writing or another applicable exception applies.

C. Former Firm Conflict Table

Practitioner's Role at Old Firm	Conflict Risk
Personally worked on the former client's matter	High
Reviewed confidential files	High
Attended strategy meetings	High
Had no involvement but had access to database	Moderate
Worked in unrelated department with no information	Lower
Joined after the old matter ended and never learned facts	Lower

XI. Imputed Conflicts

A. General Rule

If one practitioner in a firm is prohibited from representing a client because of a current-client or former-client conflict, the conflict may be imputed to all lawyers in the firm.

B. Purpose of Imputation

Imputation protects:

- Client loyalty.
 - Client confidentiality.
 - Public confidence in representation.
 - Integrity of the Tax Court process.
 - Former-client trust.
-

C. Imputation Table

Situation	Imputed to Firm?	Explanation
One firm lawyer represents a client directly adverse to another current firm client	Usually yes	Current-client conflicts are generally imputed.
One firm lawyer formerly represented adverse party in same matter	Usually yes	Former-client conflict may be imputed.
Conflict is purely personal to one lawyer	Not always	Personal-interest conflicts may not materially limit others.
Lateral lawyer brings former-client conflict from old firm	Possibly, but screening may help	Depends on timely screening and notice.
Former government lawyer joins private firm	Governed by government-lawyer conflict rule	Timely screening and notice may avoid firm disqualification.
Lawyer leaves firm	Firm may continue unless remaining lawyers have material protected information	Depends on facts.

XII. Screening

A. Definition

Screening means isolating the disqualified practitioner from the matter to protect confidential information.

Screening may include:

- No access to files.
- No participation in meetings.
- No communications about the matter.
- No sharing in fees.
- Written notice to affected former client or government agency when required.
- Certifications of compliance when required.
- Internal firm instructions.
- Electronic access restrictions.
- Calendar and billing restrictions.

B. Screening Is Not Always Enough

Screening is strongest when:

- The conflict comes from a lateral lawyer's prior firm.
- The screened lawyer did not personally represent the current client.
- The screen is timely.
- The lawyer receives no fee from the matter.
- Required notice is given.

Screening is weaker when:

- The lawyer personally represented the former client in the same matter.
- The lawyer already shared confidential information with the firm.
- The screen is delayed.
- The lawyer supervises the matter.
- The lawyer receives a fee from the matter.
- The former client is not notified when required.

C. Screening Table

Screening Requirement	Purpose
Timely screen	Prevents confidential information from spreading.
No participation	Keeps disqualified practitioner away from matter.
No part of fee	Removes financial incentive.
Written notice	Allows former client or agency to monitor compliance.
Certifications	Confirms ongoing compliance.
File access restrictions	Protects confidential information.
Internal instructions	Prevents accidental discussion or disclosure.

XIII. Lawyers Moving Between Firms

A. Incoming Lawyer

When a practitioner joins a new firm, the firm must check:

- Did the practitioner formerly represent an adverse party?
 - Is the new matter the same or substantially related?
 - Did the practitioner acquire protected information?
 - Is screening available?
 - Is informed written consent needed?
-

B. Departing Lawyer

When a practitioner leaves a firm, the old firm is not automatically disqualified from all matters involving the departing lawyer's former clients.

The old firm may continue unless:

- The new matter is the same or substantially related to the matter handled by the departed lawyer; and
 - A remaining lawyer has protected information material to the matter.
-

C. Lateral Movement Example

Facts

Practitioner A worked at Firm One and represented Taxpayer in an IRS audit. Practitioner A joins Firm Two. Firm Two represents IRS-adverse Co-Petitioner in the Tax Court case arising from the same audit.

Analysis

Practitioner A is personally conflicted. Firm Two must determine whether the conflict is imputed and whether timely screening, no fee sharing, written notice, and other required steps can avoid firmwide disqualification.

XIV. Former Government Lawyers

A. General Rule

A former government lawyer may not represent a private client in a matter in which the lawyer participated personally and substantially as a government lawyer unless the appropriate government agency gives informed consent confirmed in writing.

B. Tax Court Examples

Prior Government Role	New Private Representation	Conflict Risk
IRS attorney handled taxpayer's deficiency case	Later represents taxpayer in same Tax Court case	High
IRS attorney worked on general guidance only	Later represents taxpayer in unrelated case	Lower
DOJ Tax Division attorney litigated refund suit	Later represents taxpayer in same controversy	High
IRS attorney had confidential government information about taxpayer	Later represents adverse private client	High
IRS attorney supervised unrelated cases	Later handles unrelated Tax Court case	Depends on personal and substantial participation

C. Personally and Substantially

A former government lawyer is most at risk when the lawyer:

- Personally worked on the case.
 - Made strategy decisions.
 - Reviewed confidential taxpayer information.
 - Participated in settlement discussions.
 - Drafted pleadings or memoranda.
 - Interviewed witnesses.
 - Supervised the specific matter.
-

D. Screening for Former Government Lawyers

If the former government lawyer is disqualified, the firm may avoid disqualification if:

- The lawyer is timely screened from the matter.
 - The lawyer receives no part of the fee.
 - Written notice is given to the appropriate government agency.
-

XV. Prospective Client Issues

A. Why This Matters

A person who consults a practitioner about possible representation may disclose information even if no representation begins. That information may create later conflict problems.

B. Tax Court Examples

- Taxpayer consults Practitioner about blaming a return preparer, but does not hire Practitioner.
 - Return preparer later asks Practitioner to represent him in the same matter.
 - Spouse consults Practitioner about innocent spouse relief.
 - Other spouse later asks Practitioner to represent him.
 - Investor consults Practitioner about a promoter's advice.
 - Promoter later asks Practitioner to defend the transaction.
-

C. Exam Point

Even without formal representation, confidential information received from a prospective client can prevent later adverse representation if the information could be significantly harmful.

XVI. Tax Court Rule 24(g) Connection

A. Planning or Promoting a Transaction

A practitioner has heightened conflict risk if the practitioner previously planned, promoted, or operated a transaction or entity connected to an issue in the case.

B. Examples

Prior Involvement	New Tax Court Representation	Ethics Issue
Practitioner promoted a tax shelter	Represents investor defending deductions	Personal-interest conflict; possible witness issue
Practitioner represented promoter	Represents investor attacking promoter	Former-client conflict
Practitioner operated entity	Represents taxpayer challenging entity records	Conflict and possible witness issue
Practitioner drafted transaction documents	Represents taxpayer arguing documents were misleading	Former-client and witness concerns
Practitioner prepared returns for both spouses	Represents one spouse seeking innocent spouse relief	Former-client/current-client conflict

C. Counsel as Witness

A practitioner may have a conflict if the practitioner is likely to be a necessary witness.

Examples:

- Practitioner drafted the tax opinion.
- Practitioner promoted the transaction.
- Practitioner prepared the return.
- Practitioner advised the taxpayer on penalty exposure.
- Practitioner communicated with IRS during prior audit.

XVII. Entity and Owner Former-Client Conflicts

A. Entity Is Separate From Owner

Representing a corporation, partnership, LLC, estate, or trust does not automatically mean the practitioner represents every owner, partner, member, beneficiary, or fiduciary.

However, facts may create duties to more than one person.

B. Exam Examples

Example 1: Former Entity Client

Practitioner formerly represented Corporation in a payroll tax matter. Shareholder now wants Practitioner to represent him in Tax Court and argue Corporation caused the payroll tax issue.

Analysis:

- Corporation is a former client.
- New client is shareholder.
- Matter may be substantially related.
- Shareholder's position may be materially adverse to Corporation.
- Representation may be prohibited absent informed written consent.

Example 2: Former Shareholder Client

Practitioner formerly represented Shareholder in a constructive dividend case. Corporation now wants Practitioner to represent it and argue Shareholder diverted funds.

Analysis:

- Shareholder is a former client.
- Corporation's position is materially adverse.
- Same or substantially related matter likely exists.
- Practitioner must decline unless former client gives informed consent confirmed in writing.

XVIII. Spousal Former-Client Conflicts

A. Common Spousal Issues

Former-client conflicts often arise when:

- Spouses separate or divorce.
- One spouse seeks innocent spouse relief.
- One spouse blames the other for omitted income.
- One spouse claims lack of knowledge.
- One spouse previously consulted the practitioner alone.
- Practitioner previously represented both spouses jointly.

B. Spousal Conflict Table

Prior Representation	New Representation	Conflict Risk
Represented both spouses jointly in audit	Later represents Wife seeking innocent spouse relief against Husband	High
Represented Husband individually on business income	Later represents Wife claiming Husband hid income	High
Prepared joint return for spouses	Later represents one spouse blaming the other	Moderate to high
Consulted with Wife about innocent spouse relief	Later represents Husband against Wife's claim	High
Represented spouses years ago in unrelated matter	Represents one spouse in unrelated deficiency case	Lower

XIX. Return Preparer Former-Client Conflicts

A. Common Exam Pattern

A taxpayer may avoid penalties by arguing reasonable reliance on a return preparer.

If the practitioner formerly represented the preparer, the practitioner may not be able to represent the taxpayer in attacking the preparer.

B. Example

Practitioner formerly represented Preparer in an IRS preparer penalty investigation. Taxpayer later asks Practitioner to represent her in Tax Court and argue she reasonably relied on Preparer's advice.

Analysis:

- Preparer is a former client.
 - The taxpayer's position may be materially adverse to Preparer.
 - The matter may be substantially related if it involves the same return, advice, or reporting position.
 - Practitioner may possess confidential information about Preparer's practices or defenses.
 - Representation likely requires former client's informed written consent or must be declined.
-

XX. Promoter and Investor Former-Client Conflicts

A. High-Risk Area

Former-client conflicts are common in:

- Tax shelter cases.
 - Conservation easement cases.
 - Micro-captive insurance cases.
 - Syndicated transactions.
 - Charitable contribution programs.
 - Research credit studies.
 - Captive service arrangements.
 - Valuation cases.
-

B. Example

Practitioner formerly represented Promoter in designing a tax strategy. Investor later asks Practitioner to represent Investor in Tax Court and argue Promoter misled Investor.

Analysis:

- Promoter is a former client.
 - Investor's interests are materially adverse.
 - Same transaction means same or substantially related matter.
 - Practitioner may have confidential information from Promoter.
 - Representation is likely prohibited unless Promoter gives informed consent confirmed in writing and confidentiality can be protected.
-

XXI. Former Client vs. Current Client Conflict

A. Difference

Issue	Former-Client Conflict	Current-Client Conflict
Client status	Prior client	Existing client
Main rule	Rule 1.9	Rule 1.7
Main focus	Confidentiality and loyalty from prior matter	Loyalty and independent judgment now
Consent	Former client gives informed consent confirmed in writing	Each affected current client gives informed consent confirmed in writing
Key test	Same/substantially related + materially adverse	Direct adversity or material limitation
Common Tax Court example	Represent taxpayer against former preparer client	Represent both spouses with conflicting defenses

XXII. High-Yield Exam Tables

A. Former-Client Conflict Identification Table

Question	If Yes, Discuss
Did practitioner previously represent someone connected to the matter?	Former-client duties
Is the new client adverse to that former client?	Material adversity
Is the new matter the same or substantially related?	Rule 1.9(a)
Did practitioner learn confidential information?	Rule 1.9(c)
Did the conflict arise from a former firm?	Rule 1.9(b)
Is the practitioner now in a new firm?	Imputation and screening
Was the practitioner formerly with IRS or DOJ?	Government lawyer conflict
Is the practitioner likely to be a witness?	Tax Court Rule 24(g) counsel-as-witness
Has former client consented in writing?	Consentability

B. Same or Substantially Related Table

Facts	Likely Substantially Related?
Same taxpayer, same year, same deficiency	Yes
Same transaction, different taxpayer	Usually yes
Same tax shelter, different investors	Often yes
Same return position and same preparer	Often yes
Same entity and owner dispute	Often yes
Different tax years but same recurring issue	Maybe
Different taxpayer and unrelated tax issue	Usually no
Prior general tax planning, new unrelated litigation	Usually no

C. Imputation Table

Conflict Source	Imputed to Firm?	Possible Cure
Lawyer currently represents adverse client	Usually yes	Informed consent if consentable
Lawyer formerly represented adverse party in same matter	Usually yes	Former client consent or screening if rule allows
Lateral lawyer from former firm	Possibly	Timely screen, no fee, written notice
Former government lawyer	Special rule	Timely screen, no fee, notice to agency
Personal conflict unrelated to firm representation	Not always	Analyze material limitation
Departed lawyer's former client	Not always	Check whether remaining lawyers have material protected information

XXIII. Exam Examples

Example 1: Former Spouse Client

Practitioner formerly represented Husband in an audit involving unreported business income. Wife later asks Practitioner to represent her in Tax Court seeking innocent spouse relief and arguing Husband hid income.

Answer:

This is likely a former-client conflict. Husband is a former client, the matter is substantially related, and Wife's position is materially adverse to Husband. Practitioner must decline unless Husband gives informed consent confirmed in writing and confidentiality can be protected.

Example 2: Former Return Preparer Client

Practitioner formerly represented Preparer in a preparer penalty case. Taxpayer later asks Practitioner to represent her and argue Preparer caused the incorrect return.

Answer:

This is likely prohibited absent informed written consent from Preparer. Taxpayer's defense is materially adverse to Preparer, and the matter may be substantially related.

Example 3: Former Firm Conflict

Practitioner joins Firm B from Firm A. At Firm A, Practitioner worked on Corporation's tax shelter defense. Firm B now represents Investor against Corporation in the same tax shelter.

Answer:

Practitioner is likely personally disqualified. Firm B must analyze imputation and whether timely screening, no fee sharing, written notice, and other safeguards can avoid firmwide disqualification.

Example 4: Not Substantially Related

Practitioner prepared an individual's simple 2018 wage-earner return. Years later, Practitioner represents an unrelated taxpayer in a 2025 conservation easement Tax Court case.

Answer:

This is probably not a former-client conflict because the matters are not the same or substantially related and the new client is not materially adverse to the former client.

Example 5: Former Government Lawyer

Former IRS attorney personally handled Taxpayer's deficiency case while at the IRS. After leaving government, the attorney joins a private firm and wants to represent Taxpayer in that same Tax Court case.

Answer:

The former government lawyer is disqualified unless the appropriate government agency gives informed consent confirmed in writing. The firm must consider screening, no fee sharing, and notice requirements.

Example 6: Former Promoter Client

Practitioner formerly represented Promoter in drafting tax shelter materials. Investor later asks Practitioner to sue or defend by blaming Promoter's advice.

Answer:

This is a high-risk former-client conflict. The same transaction and adverse position make the matter substantially related and materially adverse.

Example 7: Departed Lawyer

Lawyer A leaves Firm One. Firm One later represents a taxpayer against a former client of Lawyer A. No remaining lawyer at Firm One has confidential information about the former client.

Answer:

The firm is not automatically disqualified merely because Lawyer A left. The key question is whether the matter is same/substantially related and whether any remaining lawyer has protected material information.

XXIV. Class Discussion Questions

Question 1

Practitioner formerly represented a corporation. A shareholder now wants Practitioner to argue that the corporation misclassified payments.

Discussion point:

Is this the same or substantially related matter, and are the interests materially adverse?

Question 2

Practitioner formerly represented both spouses jointly. After divorce, Wife asks Practitioner to represent her in innocent spouse relief.

Discussion point:

Can Practitioner represent Wife against Husband?

Question 3

A lateral practitioner joins a firm after working on the adverse party's IRS audit at another firm.

Discussion point:

Is the new firm automatically disqualified, or can screening cure the conflict?

Question 4

Former IRS counsel joins a private tax firm and is asked to handle a case he personally worked on at the IRS.

Discussion point:

What special government-lawyer conflict rule applies?

Question 5

Practitioner knows damaging confidential information about a former client, but the information would help the new client.

Discussion point:

May Practitioner use that information if it is not publicly known?

XXV. Student Rule Statements**A. Former-Client Rule Statement**

A practitioner who formerly represented a client may not later represent another person in the same or a substantially related matter where the new client's interests are materially adverse to the former client, unless the former client gives informed consent confirmed in writing.

B. Confidentiality Rule Statement

A practitioner may not use or reveal information relating to a former representation to the former client's disadvantage unless the ethics rules permit it or the information is generally known.

C. Imputed Conflict Rule Statement

When practitioners are associated in a firm, one practitioner's conflict under the current-client or former-client rules may be imputed to the entire firm unless an exception applies.

D. Screening Rule Statement

Screening may prevent firmwide disqualification in some former-client, lateral-move, or former-government-lawyer situations if the screen is timely, the disqualified practitioner has no participation, the practitioner receives no fee from the matter, and required notice or certifications are provided.

E. Former Government Lawyer Rule Statement

A former government lawyer may not represent a private client in a matter in which the lawyer participated personally and substantially as a government lawyer unless the appropriate government agency gives informed consent confirmed in writing.

XXVI. Exam Attack Outline

When answering a former-client or imputed-conflict question:

1. Identify the former client.
 2. Identify the new client.
 3. Determine whether the new client is materially adverse to the former client.
 4. Decide whether the matter is the same or substantially related.
 5. Identify any confidential information learned in the prior representation.
 6. Determine whether informed consent confirmed in writing was obtained.
 7. Analyze whether the conflict is imputed to the firm.
 8. Check whether screening is available and properly implemented.
 9. Consider special government-lawyer rules if the practitioner worked for IRS, DOJ, or another government agency.
 10. Determine whether withdrawal, disqualification, or refusal of representation is required.
-

XXVII. Bottom-Line Rule

Former-client conflicts protect loyalty and confidentiality after representation ends. A Tax Court practitioner must not switch sides in the same or a substantially related matter where the new client is materially adverse to the former client unless the former client gives informed consent confirmed in writing. If the conflict belongs to one practitioner in a firm, the firm must also analyze imputation, screening, consent, and withdrawal before continuing representation.

Return Preparer, Practitioner as Witness, and Trial-Role Limits

I. Course Purpose

This module teaches students how to identify legal ethics problems when a Tax Court practitioner also has a prior or current role as:

- Tax return preparer;
- Tax advisor;
- Transaction planner;
- Promoter;
- Entity operator;
- Fact witness;
- Expert witness;
- Trial advocate;
- Prior representative in an IRS audit or administrative matter.

The exam focus is whether the practitioner may ethically continue as counsel when the practitioner's own conduct, advice, documents, communications, or return-preparation work may become evidence in the Tax Court case.

II. Governing Ethics Framework

A. Main Rules Tested

Authority	Main Point
Tax Court Rule 201	Tax Court practitioners must follow the ABA Model Rules of Professional Conduct.
Tax Court Rule 24(g)(1)	Counsel involved in planning/promoting a transaction, operating an entity, or representing persons with differing interests must secure informed written consent, withdraw, or cure the conflict.
Tax Court Rule 24(g)(2)	Counsel generally may not represent a party at trial if counsel is likely to be a necessary witness.
ABA Model Rule 1.1	Practitioner must provide competent representation.
ABA Model Rule 1.6	Practitioner must protect confidential client information.
ABA Model Rule 1.7	Practitioner must avoid current-client conflicts and personal-interest conflicts.
ABA Model Rule 1.9	Practitioner must protect former-client duties and confidential information.
ABA Model Rule 3.3	Practitioner must be candid with the tribunal.
ABA Model Rule 3.4	Practitioner must not obstruct evidence, falsify evidence, or improperly influence witnesses.
ABA Model Rule 3.7	Lawyer-as-witness rule; advocate may not also serve as necessary trial witness unless an exception applies.

III. High-Yield Exam Issue

The central question is:

Can the practitioner ethically serve as trial advocate when the practitioner's own conduct, advice, return preparation, or transaction role may become evidence?

Students should look for facts showing that the practitioner is not merely representing the taxpayer but is also connected to the underlying facts being litigated.

IV. Return Preparer as Practitioner

A. Basic Rule

A person who prepared the taxpayer's return may later represent the taxpayer in Tax Court only if:

- The practitioner is admitted and eligible to practice before the Tax Court;
- The practitioner can provide competent and diligent representation;
- The practitioner's own work is not a material issue in the case;
- The practitioner is not likely to be a necessary witness;
- No conflict of interest materially limits the representation;
- The practitioner can protect confidentiality and comply with candor duties.

Return preparation alone does not automatically disqualify the practitioner, but it creates risk when the return position, reliance defense, or preparer conduct is disputed.

B. Common Return Preparer Issues

Situation	Ethics Risk	Exam Analysis
Practitioner prepared return and IRS disallows deduction	Moderate	Practitioner may represent taxpayer if preparer conduct is not disputed.
Taxpayer claims reliance on practitioner's advice	High	Practitioner may become necessary witness.
IRS asserts accuracy-related penalty	High	Taxpayer may need to prove reasonable cause and good faith.
Practitioner gave written tax advice supporting return position	High	Advice may be evidence.
Practitioner made mistake on return	High	Practitioner's personal interest may limit judgment.
Practitioner wants to defend own work	High	Personal-interest conflict.
Practitioner is accused of promoting improper position	Very high	Conflict, witness, and credibility issues.
Taxpayer blames preparer for penalty	Very high	Practitioner likely cannot be advocate and witness.

V. Return Preparer Conflict Analysis

A. Personal-Interest Conflict

A personal-interest conflict may exist when the practitioner's own conduct is relevant to the taxpayer's defense.

Examples:

- Practitioner prepared the disputed return.
 - Practitioner advised the taxpayer to claim the disputed deduction.
 - Practitioner drafted the tax opinion.
 - Practitioner calculated basis.
 - Practitioner classified workers.
 - Practitioner advised that income was not taxable.
 - Practitioner failed to report income provided by the taxpayer.
 - Practitioner failed to attach required forms.
 - Practitioner recommended a transaction later challenged by the IRS.
-

B. Why Personal-Interest Conflicts Matter

A practitioner may be tempted to:

- Defend the taxpayer in a way that protects the practitioner's own reputation;
 - Avoid admitting a preparer error;
 - Avoid calling a witness who may criticize the practitioner;
 - Avoid producing documents showing weak advice;
 - Discourage the taxpayer from asserting a reasonable-reliance defense;
 - Settle quickly to prevent scrutiny of the practitioner's conduct.
-

C. Exam Rule

A practitioner may continue only if:

- The conflict is consentable;
 - The practitioner reasonably believes competent and diligent representation remains possible;
 - The representation is not prohibited by law or court rule;
 - The client gives informed consent confirmed in writing;
 - The practitioner is not likely to be a necessary witness at trial unless an exception applies.
-

VI. Practitioner as Necessary Witness

A. Core Rule

A practitioner generally may not act as trial advocate if the practitioner is likely to be a necessary witness.

A practitioner is likely to be a necessary witness when:

- The practitioner has personal knowledge of contested facts;
- The testimony is important to proving or defending the case;
- The evidence cannot be obtained as effectively from another source;
- The practitioner’s testimony concerns disputed matters, not merely routine or uncontested facts.

B. Necessary Witness Table

Practitioner Knowledge	Necessary Witness?	Reason
Prepared the return but facts are undisputed	Maybe not	Testimony may be unnecessary.
Gave advice taxpayer relied on to avoid penalty	Likely yes	Reliance and reasonableness may be contested.
Drafted tax opinion central to penalty defense	Likely yes	Advice may be key evidence.
Discussed omitted income with taxpayer	Likely yes	Knowledge and intent may be disputed.
Calculated basis using taxpayer documents	Maybe	Depends whether calculation or documents are disputed.
Merely filed procedural Tax Court documents	Usually no	Legal services are generally not fact evidence.
Negotiated settlement only	Usually no	Settlement communications may not be trial evidence.
Planned or promoted transaction under attack	Likely yes	Practitioner’s role may be central.

VII. Exceptions to Advocate-Witness Rule

A. Three Main Exceptions

Counsel may continue despite witness concerns if:

1. The testimony relates to an uncontested issue;
 2. The testimony relates to the nature and value of legal services rendered in the case;
 3. Disqualification would work substantial hardship on the client.
-

B. Exception Table

Exception	Meaning	Example
Uncontested issue	No meaningful dispute about the fact	Practitioner testifies only that a document was mailed on a date everyone accepts.
Nature/value of legal services	Testimony concerns fee or services rendered	Fee dispute or fee-related issue, not merits of tax deficiency.
Substantial hardship	Removing counsel would seriously harm client	Trial imminent, no substitute counsel available, and hardship outweighs advocate-witness concern.

C. Exam Warning

The substantial-hardship exception is not automatic.

A client's preference for the practitioner is not enough by itself. Students should look for facts showing severe prejudice, such as:

- Trial is imminent;
 - Case is unusually complex;
 - Substitute counsel cannot reasonably prepare;
 - Practitioner has unique procedural knowledge;
 - Disqualification would severely disrupt the case.
-

VIII. Return Preparer and Penalty Defense

A. Common Penalty Issue

Taxpayers often defend against penalties by arguing:

- They acted with reasonable cause;
- They acted in good faith;
- They relied on a competent tax professional;
- They gave the preparer complete and accurate information;
- The preparer advised that the position was proper.

When the practitioner was the preparer or advisor, the practitioner's own advice may become evidence.

B. Reliance Defense Conflict Table

Fact Pattern	Ethics Issue
Taxpayer says, "I relied on my preparer, who is now my Tax Court counsel."	Counsel may be necessary witness.
Taxpayer says preparer never explained the risk.	Counsel's conduct is disputed.
Taxpayer says preparer chose the deduction.	Counsel may have personal-interest conflict.
IRS claims taxpayer ignored clear warnings.	Counsel may need to testify about advice and communications.
Practitioner wants to avoid raising reliance defense.	Conflict if reliance is taxpayer's best defense.

C. Example

Facts

Practitioner prepared Taxpayer's return and advised Taxpayer to claim a large charitable contribution deduction. IRS disallows the deduction and asserts penalties. Taxpayer's best defense is that he reasonably relied on Practitioner's advice.

Analysis

Practitioner may have a personal-interest conflict because the penalty defense depends on Practitioner's own advice. Practitioner may also be a necessary witness. Practitioner should evaluate withdrawal or replacement as trial counsel.

IX. Practitioner Prepared the Return but Is Not a Witness

A. When Continued Representation May Be Permissible

A practitioner who prepared the return may still represent the taxpayer if:

- The issue is purely legal;
 - The preparer's advice is not disputed;
 - The taxpayer is not asserting reliance on the preparer;
 - The practitioner's credibility is not at issue;
 - All relevant facts can be proven through documents or other witnesses;
 - No conflict materially limits the representation.
-

B. Example

Facts

Practitioner prepared Taxpayer's return. IRS disallows a deduction solely because the statute does not allow it. No penalty is asserted. Taxpayer does not claim reliance on Practitioner's advice.

Result

The practitioner may not be a necessary witness. Representation may be permissible if the practitioner can competently and diligently represent the taxpayer.

X. Practitioner Prepared the Return and Is a Witness

A. When Withdrawal Is Likely Required

Withdrawal or replacement as trial counsel is likely when:

- Practitioner’s advice is disputed;
 - Practitioner’s return-preparation work is central to the case;
 - Practitioner may need to testify about taxpayer communications;
 - Practitioner’s credibility will be evaluated by the Court;
 - Practitioner may be cross-examined;
 - Practitioner’s personal interest conflicts with client’s best defense.
-

B. Example

Facts

Taxpayer tells the Court that Practitioner told him a deduction was “guaranteed.” Practitioner denies making that statement. Practitioner wants to remain trial counsel.

Result

Practitioner is likely a necessary witness on a contested issue. Practitioner should not serve as trial advocate unless a narrow exception applies.

XI. Planning, Promoting, or Operating a Transaction

A. Tax Court-Specific Risk

Counsel has special conflict risk if counsel:

- Planned the transaction;
 - Promoted the transaction;
 - Operated an entity connected to the case;
 - Drafted the transaction documents;
 - Issued opinion letters;
 - Marketed the tax strategy;
 - Managed the entity whose records are disputed;
 - Received fees connected to the transaction.
-

B. Transaction Role Table

Practitioner Role	Why It Matters
Planned transaction	Practitioner's advice may be evidence.
Promoted transaction	Practitioner may have personal financial/reputation interest.
Operated entity	Practitioner may know contested operational facts.
Drafted documents	Practitioner may testify about intent and meaning.
Issued opinion letter	Reliance defense may depend on advice.
Marketed investment	Practitioner may be adverse to taxpayer or investor.
Managed records	Practitioner may be witness about documents and accounting.

C. Example

Facts

Practitioner helped organize a syndicated conservation easement transaction and wrote a tax memorandum supporting the deduction. IRS challenges the deduction in Tax Court. Practitioner wants to represent investors.

Analysis

Practitioner may have a conflict because the practitioner's own advice and promotion are connected to issues in the case. Practitioner may also be a necessary witness. Informed written consent may not be enough if the practitioner cannot provide independent representation or will be a necessary trial witness.

XII. Trial-Role Limits

A. Advocate Role

The advocate's role is to:

- Present legal arguments;
- Examine witnesses;
- Object to improper evidence;
- Introduce admissible evidence;
- Explain the client's position;
- Challenge the IRS position;
- Preserve issues for decision.

B. Witness Role

The witness's role is to:

- Testify from personal knowledge;
- Answer questions under oath;
- Be subject to cross-examination;
- Provide evidence, not argument;
- Allow credibility to be evaluated by the Court.

C. Why the Roles Usually Cannot Be Combined

Combining advocate and witness roles can:

- Confuse the Court;
 - Give counsel improper credibility;
 - Make counsel's statements appear like evidence;
 - Impair cross-examination;
 - Prejudice the opposing party;
 - Undermine the fairness of trial;
 - Create conflict between client interests and practitioner self-protection.
-

XIII. Advocate vs. Witness Table

Function	Advocate	Witness
Speaks in argument	Yes	No
Testifies under oath	No	Yes
Subject to cross-examination	No	Yes
Has personal knowledge	Not required	Required
Presents evidence	Yes	No, gives evidence
Credibility assessed as evidence	No	Yes
May object	Yes	No
May be impeached	Not as witness	Yes

XIV. Another Professional in the Firm as Witness

A. General Rule

One professional in the practitioner's firm may be called as a witness while another practitioner from the same firm serves as trial counsel, unless conflict rules prevent it.

B. Conflict Still Must Be Checked

Even if a different firm member is the witness, the firm must analyze:

- Current-client conflicts;
- Former-client conflicts;
- Confidentiality;
- Imputation;
- Material limitation;
- Whether the witness's conduct creates firm-level exposure;
- Whether trial counsel's loyalty or judgment will be affected.

C. Example

Facts

Partner A prepared the tax opinion. Partner B from the same firm wants to try the Tax Court case. Partner A will testify about the opinion.

Analysis

Partner B may be allowed to act as trial counsel if conflict rules do not prohibit it. But the firm must analyze whether Partner A's role creates a current-client conflict, former-client issue, or personal-interest limitation for the firm.

XV. Return Preparer as Third-Party Witness

A. When the Preparer Is Not Counsel

If the return preparer is not serving as counsel, the preparer may be called as a fact witness.

Possible testimony:

- What documents taxpayer provided;
 - What questions were asked;
 - What advice was given;
 - What assumptions were made;
 - Whether taxpayer disclosed all relevant facts;
 - Whether preparer warned taxpayer about risks;
 - How the return position was chosen.
-

B. Ethical Duties of Practitioner Calling Preparer

Counsel must:

- Avoid coaching false testimony;
 - Prepare witness ethically;
 - Preserve privilege and confidentiality;
 - Avoid obstructing access to evidence;
 - Avoid misleading the Court;
 - Correct false statements when required;
 - Distinguish evidence from argument.
-

XVI. Return Preparer's File and Evidence

A. Common Evidence

Return-preparer issues may involve:

- Engagement letters;
- Emails;
- Tax organizer;
- Client questionnaires;
- Source documents;
- Draft returns;
- Final filed returns;
- Workpapers;
- Notes of client interviews;
- Written tax opinions;
- Research memoranda;
- Billing records;
- IRS correspondence.

B. Evidence Table

Document	Why It Matters
Engagement letter	Defines scope and responsibility.
Tax organizer	Shows what information taxpayer gave preparer.
Emails	Show advice, warnings, and reliance.
Workpapers	Show calculations and assumptions.
Source documents	Show what facts were available.
Opinion letter	May support or weaken reliance defense.
Billing records	May show services performed.
Draft returns	May show changes or omitted items.
IRS correspondence	May show prior notice of issue.

XVII. Candor and False Evidence

A. Practitioner Cannot Present False Evidence

A practitioner may not knowingly:

- Make false statements to the Court;
 - Offer false evidence;
 - Allow false testimony to stand uncorrected when correction is required;
 - Mischaracterize documents;
 - Mislead the Court about the practitioner's own role.
-

B. Return Preparer Example

Facts

Practitioner knows Taxpayer did not give complete records during return preparation. Taxpayer plans to testify that he gave Practitioner every document.

Analysis

Practitioner must not assist false testimony. Practitioner may need to counsel the client, refuse to offer false evidence, seek withdrawal, or take other required remedial measures.

XVIII. Fairness to Opposing Party and Counsel

A. Practitioner Must Not Obstruct Evidence

A practitioner may not:

- Hide preparer workpapers;
 - Destroy emails;
 - Tell a witness to avoid IRS counsel improperly;
 - Falsify documents;
 - Alter engagement letters;
 - Coach false testimony;
 - Conceal documents with evidentiary value;
 - Mislead opposing counsel about witness availability.
-

B. Example

Facts

Taxpayer asks Practitioner to “clean up” emails showing the deduction was risky before producing documents.

Result

Practitioner must not alter, destroy, or conceal evidence. The practitioner should instruct the client to preserve documents and comply with discovery duties.

XIX. Confidentiality and Privilege Issues

A. Confidentiality Still Applies

Even when the practitioner may become a witness, the practitioner still owes confidentiality duties to the client.

B. Confidentiality Problems

Confidentiality problems arise when:

- Practitioner’s testimony would reveal client communications;
- Taxpayer blames practitioner;
- Practitioner needs to defend personal conduct;
- IRS seeks preparer files;
- Former client information appears in the file;
- Joint clients disagree about waiver or disclosure.

C. Exam Point

Confidentiality does not automatically allow the practitioner to continue as trial counsel. If the practitioner cannot represent the client without becoming a witness or revealing protected information, withdrawal may be required.

XX. Withdrawal and Replacement Counsel

A. When Withdrawal May Be Required

Withdrawal or replacement as trial counsel may be required when:

- Practitioner is a necessary witness;
- Practitioner's personal conduct is disputed;
- Practitioner's independent judgment is materially limited;
- Practitioner cannot present the client's best defense without self-interest;
- Practitioner would need to cross-examine himself or defend his own advice;
- Continued representation would violate Tax Court rules or ABA Model Rules.

B. Withdrawal Table

Situation	Proper Response
Practitioner may testify on minor uncontested fact	Representation may continue under exception.
Practitioner's advice is central to penalty defense	Withdraw or use separate trial counsel.
Practitioner's return preparation is accused as negligent	Analyze conflict; likely withdraw.
Practitioner promoted challenged transaction	Informed written consent, withdrawal, or cure conflict; may still be trial-witness bar.
Another firm member is witness	Check conflicts; representation may continue if not prohibited.
Trial is imminent and disqualification causes severe prejudice	Consider substantial-hardship exception, but do not assume it applies.

XXI. Informed Written Consent

A. When Consent Matters

Informed written consent may be relevant when:

- Practitioner has a personal-interest conflict;
 - Practitioner planned or promoted the transaction;
 - Practitioner operated an entity connected to the issue;
 - Practitioner represents multiple persons with differing interests;
 - Practitioner's prior role may materially limit representation.
-

B. What Consent Must Explain

A proper consent should explain:

- Practitioner's prior role;
 - How that role may affect independent judgment;
 - Whether practitioner may become a witness;
 - Risk that replacement counsel may be needed;
 - Possible effect on penalty defenses;
 - Possible confidentiality issues;
 - Alternatives, including independent counsel;
 - Client's right to refuse consent.
-

C. Consent Is Not Always Enough

Consent does not solve the problem if:

- Practitioner is likely to be a necessary witness at trial;
 - Practitioner cannot competently and diligently represent the client;
 - Practitioner's personal interest is too severe;
 - The Court's rules prohibit continued trial representation;
 - Continued representation would prejudice the Court process.
-

XXII. Taxpayer Blames the Preparer

A. High-Risk Pattern

This is one of the clearest exam patterns.

Facts

Taxpayer says:

- “My preparer made the mistake.”
- “I relied on the preparer.”
- “The preparer told me not to report it.”
- “The preparer never explained the risk.”
- “The preparer had all the documents.”
- “The preparer chose the tax position.”

If the preparer is also counsel, there is a serious conflict and witness problem.

B. Table

Taxpayer Statement	Issue Created
“I relied on my preparer.”	Preparer may be necessary witness.
“My preparer made the mistake.”	Personal-interest conflict.
“The preparer had all records.”	Factual dispute about disclosure.
“The preparer told me it was allowed.”	Advice becomes evidence.
“The preparer ignored my documents.”	Preparer credibility is at issue.
“The preparer promoted the investment.”	Transaction-promotion conflict.

XXIII. Preparer Blames the Taxpayer

A. Opposite Pattern

The practitioner-preparer may believe the taxpayer caused the problem by:

- Withholding records;
- Lying about income;
- Failing to disclose accounts;
- Ignoring advice;
- Signing without review;
- Pressuring preparer to take a position.

B. Conflict Problem

If the practitioner's own defense is "the client caused it," the practitioner cannot loyally represent the client.

XXIV. Promoter, Advisor, and Witness Problems

A. High-Risk Transactions

Practitioner-as-witness issues commonly arise in:

- Conservation easement cases;
 - Micro-captive insurance cases;
 - Research credit studies;
 - Charitable contribution cases;
 - Partnership and S corporation basis disputes;
 - Worker classification cases;
 - Trust fund recovery penalty cases;
 - Listed transactions;
 - Tax shelters;
 - Valuation cases.
-

B. Example

Facts

Practitioner promoted a transaction and wrote a tax opinion. IRS disallows the transaction and asserts penalties. Taxpayer's defense is reasonable reliance on Practitioner's opinion.

Analysis

Practitioner's opinion, communications, and credibility are central. Practitioner is likely a necessary witness and has a personal-interest conflict.

XXV. Exam Attack Outline

When answering a USTCP ethics question involving return preparers or practitioner witnesses:

1. Identify the practitioner's role.
 2. Determine whether the practitioner prepared the return, gave advice, planned a transaction, promoted a strategy, or operated an entity.
 3. Ask whether the practitioner has personal knowledge of contested facts.
 4. Decide whether the practitioner is likely to be a necessary witness.
 5. Apply the advocate-witness rule.
 6. Check whether an exception applies.
 7. Analyze personal-interest conflict under current-client conflict principles.
 8. Determine whether informed written consent is required.
 9. Decide whether consent is enough or whether withdrawal is required.
 10. Consider whether another professional in the firm may try the case.
 11. Address confidentiality, candor, and fairness duties.
 12. Conclude whether the practitioner may continue, must withdraw, or must use separate trial counsel.
-

XXVI. High-Yield Exam Tables

A. Red Flag Table

Red Flag	Likely Issue
Practitioner prepared disputed return	Possible witness and personal-interest conflict.
Taxpayer claims reliance on practitioner	Necessary witness issue.
IRS asserts penalties	Preparer advice may be central.
Practitioner promoted transaction	Rule 24(g) conflict and witness problem.
Practitioner operated entity	Fact witness and conflict issue.
Practitioner drafted documents	Witness about intent, advice, and meaning.
Practitioner wants to defend own work	Personal-interest conflict.
Taxpayer blames practitioner	Counsel cannot loyally represent client.
Practitioner blames taxpayer	Loyalty and confidentiality conflict.
Another firm member is witness	Check imputation/current/former-client conflicts.

B. Continue or Withdraw Table

Facts	Likely Result
Practitioner prepared return; issue is purely legal; no penalties	May continue if no conflict.
Practitioner prepared return; reliance defense asserted	Likely withdraw or use separate trial counsel.
Practitioner gave advice central to penalty defense	Likely necessary witness.
Practitioner promoted transaction	High risk; consent, withdrawal, or cure required.
Practitioner testimony is uncontested mailing fact	May continue under exception.
Practitioner testimony concerns legal fees	May continue under exception.
Disqualification on eve of trial would severely harm client	Substantial-hardship exception may apply.
Practitioner's credibility is central	Should not serve as advocate.

XXVII. Class Examples

Example 1 — Return Preparer May Continue

Practitioner prepared Taxpayer's return. IRS disallows a deduction based only on statutory interpretation. No penalty is asserted, and Taxpayer does not claim reliance on Practitioner's advice.

Answer

Practitioner may likely continue because the practitioner is not a necessary witness and the issue is legal, not factual.

Example 2 — Return Preparer Must Consider Withdrawal

Practitioner prepared the return and advised Taxpayer to claim a deduction. IRS asserts penalties. Taxpayer's best defense is reliance on Practitioner.

Answer

Practitioner may be a necessary witness and may have a personal-interest conflict. Separate trial counsel or withdrawal is likely required.

Example 3 — Practitioner Promoted Transaction

Practitioner marketed a tax strategy and received fees from investors. IRS challenges the transaction. Practitioner wants to represent investors in Tax Court.

Answer

Practitioner's promotion role creates conflict and witness concerns. Practitioner must obtain informed written consent, withdraw, or cure the conflict, but consent may not permit trial advocacy if the practitioner is a necessary witness.

Example 4 — Another Firm Member as Witness

Partner A wrote the tax opinion. Partner B wants to represent Taxpayer at trial. Partner A will testify.

Answer

Partner B may serve as trial advocate unless conflict rules prohibit it. The firm must still analyze current-client, former-client, confidentiality, and imputation issues.

Example 5 — False Testimony

Taxpayer plans to testify that he gave Practitioner all records, but Practitioner knows Taxpayer withheld key bank statements.

Answer

Practitioner may not assist false testimony. Practitioner must address candor, confidentiality, and possible withdrawal or remedial duties.

XXVIII. Student Rule Statements

A. Return Preparer Rule Statement

A practitioner who prepared the taxpayer's return is not automatically disqualified from representing the taxpayer in Tax Court, but representation becomes ethically risky if the practitioner's advice, preparation work, or conduct is disputed or central to the case.

B. Practitioner-as-Witness Rule Statement

A practitioner generally may not act as trial advocate if the practitioner is likely to be a necessary witness, unless the testimony concerns an uncontested issue, the nature and value of legal services, or disqualification would cause substantial hardship to the client.

C. Personal-Interest Conflict Rule Statement

A practitioner has a personal-interest conflict when the practitioner's own financial, reputational, or legal interests create a significant risk of materially limiting the representation of the client.

D. Trial-Role Limit Rule Statement

A practitioner should not combine the role of advocate and witness on contested facts because the advocate argues the case while the witness supplies evidence subject to cross-examination.

E. Transaction Role Rule Statement

If counsel planned or promoted a transaction or operated an entity connected to an issue in the case, counsel must obtain informed written consent, withdraw, or take other steps necessary to cure the conflict; separate trial counsel may still be required if counsel is a necessary witness.

XXIX. Bottom-Line Rule

For USTCP exam purposes, a practitioner who prepared the return, gave the tax advice, promoted the transaction, or operated the entity must carefully analyze conflict and witness problems before appearing at trial. The key issue is whether the practitioner can remain a loyal, independent advocate or whether the practitioner's own role makes the practitioner a necessary witness or creates a personal-interest conflict. If the practitioner's testimony is central to contested facts, the practitioner generally should not serve as trial counsel.

Candor, False Evidence, Client Fraud, and Remedial Measures

I. Course Purpose

This module teaches students how to identify and analyze ethical duties when a Tax Court practitioner discovers or suspects:

- False testimony;
- False documents;
- False factual statements to the Court;
- False factual statements to IRS counsel;
- Omitted controlling legal authority;
- Client fraud involving the Court, IRS, or opposing party;
- Client use of the practitioner's services to commit or continue fraud;
- Evidence destruction or concealment;
- Need for withdrawal, correction, or disclosure.

The central exam issue is whether the practitioner may continue advocating for the client while still complying with candor, fairness, confidentiality, and fraud-prevention duties.

II. Core USTCP Exam Rule

A Tax Court practitioner must advocate zealously but honestly.

The practitioner may not:

- Lie to the Court;
 - Present evidence known to be false;
 - Allow material false evidence to remain uncorrected;
 - Conceal controlling adverse authority;
 - Assist a client's fraud;
 - Destroy or hide evidence;
 - Mislead IRS counsel;
 - Use confidentiality as a shield to continue misleading the tribunal.
-

III. Governing Rules

A. Main Ethics Rules

Authority	Rule	Core Point
Tax Court Rule 201	Conduct before the Court	Tax Court practitioners must follow the letter and spirit of the ABA Model Rules.
ABA Model Rule 3.3	Candor Toward the Tribunal	Practitioner must not knowingly make false statements, offer false evidence, or fail to correct material false statements.
ABA Model Rule 3.4	Fairness to Opposing Party and Counsel	Practitioner must not obstruct evidence, falsify evidence, or assist false testimony.
ABA Model Rule 1.2(d)	Client Fraud or Crime	Practitioner must not counsel or assist criminal or fraudulent conduct.
ABA Model Rule 1.6	Confidentiality	Protects client information but includes limited exceptions for certain crime/fraud situations.
ABA Model Rule 1.16	Withdrawal	Practitioner may or must withdraw when continued representation violates ethics rules or law.
ABA Model Rule 4.1	Truthfulness to Others	Practitioner must not knowingly make false material statements to third persons, including IRS counsel.
ABA Model Rule 8.4	Misconduct	Dishonesty, fraud, deceit, or misrepresentation may constitute professional misconduct.

IV. Key Definitions

A. Knowingly

“Knowingly” means actual knowledge, but knowledge may be inferred from circumstances.

Examples:

- Client admits the testimony is false.
 - Practitioner has documents proving the client’s statement is false.
 - Practitioner personally prepared records showing the opposite fact.
 - Client asks practitioner to hide documents.
 - Client changes testimony after learning what fact would help the case.
-

B. Reasonably Believes

A practitioner “reasonably believes” something when there is a reasonable factual basis for the belief, even if the practitioner does not have actual knowledge.

Exam distinction:

Mental State	Meaning	Ethical Effect
Suspicion	Practitioner is concerned but lacks firm basis	Investigate, question client, review records.
Reasonable belief	Practitioner has objective basis to believe evidence may be false	May refuse to offer evidence, except special limits for criminal-defendant testimony.
Knowledge	Practitioner actually knows evidence is false, or knowledge can be inferred	Must not offer it; if already offered, must take remedial measures.

C. Tribunal

In this course, “tribunal” means the U.S. Tax Court.

Statements to the Tax Court include:

- Pleadings;
 - Motions;
 - Stipulations;
 - Trial testimony;
 - Trial memoranda;
 - Status reports;
 - Proposed findings of fact;
 - Briefs;
 - Oral representations at calendar call or trial;
 - Statements in settlement documents filed with the Court.
-

D. Material Fact

A fact is material when it matters to the Court’s decision, procedure, jurisdiction, penalty analysis, credibility, or relief.

Examples:

- Whether the petition was timely filed;
 - Whether income was received;
 - Whether deductions were substantiated;
 - Whether the taxpayer relied on a preparer;
 - Whether documents were created before or after the return was filed;
 - Whether the taxpayer had reasonable cause;
 - Whether the taxpayer knew a statement was false;
 - Whether a settlement has been authorized.
-

V. Candor Toward the Tribunal

A. Core Duties

A Tax Court practitioner must not knowingly:

- Make a false statement of fact to the Court;
- Make a false statement of law to the Court;
- Fail to correct a false material statement previously made to the Court;
- Fail to disclose controlling adverse legal authority not disclosed by the IRS;
- Offer evidence the practitioner knows is false;
- Allow false material evidence to remain uncorrected.

B. Candor Table

Situation	Proper Conduct	Improper Conduct
Practitioner discovers motion contains false fact	Correct the statement promptly	Leave the false statement because it helps client
Client wants to testify falsely	Counsel client not to lie; refuse false evidence; take remedial measures if needed	Put client on stand knowing testimony is false
IRS misses controlling adverse case	Disclose controlling adverse authority	Stay silent if authority is controlling and directly adverse
Practitioner misstates law by mistake	Correct when discovered	Ignore the mistake after discovering it
False document already filed	Seek correction or withdrawal of document; remedial measures if needed	Argue document is true despite knowing it is false

VI. False Statements of Fact

A. Examples in Tax Court

False factual statements may include:

- “The taxpayer never received the notice.”
 - “The taxpayer mailed the petition on time.”
 - “The taxpayer has no bank records.”
 - “All income was reported.”
 - “The taxpayer gave the preparer all records.”
 - “The business had no personal expenses.”
 - “The documents were created before the return was filed.”
 - “The client authorized settlement.”
 - “No prior case involved the same tax years.”
-

B. Example

Facts

Taxpayer tells Practitioner that she received the notice of deficiency but wants Practitioner to argue she never received it.

Analysis

Practitioner may not knowingly make a false statement to the Court. Practitioner may challenge jurisdiction or mailing only if there is a good-faith factual and legal basis.

VII. False Statements of Law

A. Rule

A practitioner must not knowingly misstate the law to the Court.

False legal statements include:

- Citing a repealed rule as current law;
- Claiming no controlling case exists when one does;
- Misquoting a statute or regulation;
- Hiding a directly adverse Tax Court or appellate authority that controls;
- Saying a deadline is extendable when the law clearly says it is not.

B. Adverse Authority

A practitioner must disclose legal authority when it is:

- In the controlling jurisdiction;
- Directly adverse to the client's position;
- Known to the practitioner;
- Not disclosed by opposing counsel.

C. Adverse Authority Table

Authority	Must Disclose?	Reason
Controlling Supreme Court case directly against client	Yes	Controlling and directly adverse.
Controlling appellate case for appeal venue	Yes	Controlling jurisdiction.
Tax Court reviewed opinion directly on point	Usually yes if controlling in Tax Court context	Directly adverse and highly authoritative.
Nonbinding district court case from another circuit	Usually no under Rule 3.3, but may need to distinguish honestly	Not controlling.
IRS publication	Usually no as controlling authority	Not controlling law.
Case already disclosed by IRS counsel	No separate Rule 3.3 duty, but must address honestly	Already disclosed.

VIII. False Evidence

A. Forms of False Evidence

False evidence may include:

- False testimony;
 - Altered documents;
 - Backdated receipts;
 - Fake mileage logs;
 - Fabricated invoices;
 - False bank records;
 - False charitable contribution acknowledgments;
 - False appraisals;
 - False business records;
 - False affidavits or declarations;
 - Misleading stipulations;
 - Expert reports based on knowingly false facts.
-

B. Known False Evidence

A practitioner may not offer evidence the practitioner knows is false.

If the evidence has already been offered and the practitioner later learns it is false, the practitioner must take reasonable remedial measures.

C. False Evidence Table

Evidence Problem	Practitioner's Duty
Client wants to submit fake receipts	Refuse to submit them.
Client already testified falsely	Counsel client to correct; take remedial measures if needed.
Witness plans to lie	Refuse to call witness if testimony is known false.
Practitioner reasonably believes evidence is false but does not know	May refuse to offer evidence.
Client gave incomplete but not false testimony	Clarify if material; avoid misleading presentation.
Evidence is unfavorable but true	May not hide or destroy; decide whether legally required to produce.

IX. Client False Testimony

A. Before Testimony

If a client says they intend to lie, the practitioner should:

1. Stop and question the client carefully.
2. Explain the duty of truthfulness.
3. Explain the consequences of perjury or false testimony.
4. Refuse to offer testimony known to be false.
5. Consider withdrawal if the client insists.
6. Avoid assisting the fraud.

B. During Testimony

If the client unexpectedly lies during testimony, the practitioner should:

1. Avoid reinforcing the false testimony.
 2. Request a recess if possible.
 3. Counsel the client privately to correct the testimony.
 4. Seek voluntary correction.
 5. If the client refuses, take reasonable remedial measures.
 6. If necessary, disclose to the tribunal.
-

C. After Testimony

If the practitioner later learns testimony was false, the practitioner should:

1. Confirm the facts.
 2. Counsel the client to correct the false testimony.
 3. Seek correction by stipulation, supplemental filing, or testimony.
 4. Consider withdrawal.
 5. If withdrawal alone will not correct the fraud, disclose if necessary.
-

X. Reasonable Remedial Measures

A. Definition

Reasonable remedial measures are steps a practitioner must take to correct or prevent false evidence or client fraud affecting a tribunal.

B. Common Remedial Measures

Step	Description	When Used
Remonstrate with client	Privately urge client to correct falsehood	First step when possible
Refuse to offer evidence	Do not present known false evidence	Before evidence is submitted
Correct statement	File correction or tell Court statement was inaccurate	Practitioner made false statement
Seek client's voluntary correction	Ask client to amend testimony or filing	Client offered false evidence
Withdraw	Seek permission to withdraw if representation cannot continue	When continued advocacy would assist fraud
Disaffirm prior statement	Withdraw reliance on false document or representation	When withdrawal alone is insufficient
Disclosure to tribunal	Reveal enough to correct false evidence or fraud	Last resort when necessary

C. Remedial Measures Sequence

The usual sequence is:

1. Investigate and confirm.
2. Counsel the client.
3. Ask the client to correct.
4. Refuse to use the false evidence.
5. Withdraw if appropriate.
6. Disclose to the Court if necessary to correct the fraud.

D. Exam Warning

Withdrawal alone may not be enough if false evidence remains before the Court.

If the Court would continue relying on known false evidence, remedial measures may require disclosure despite confidentiality concerns.

XI. Candor vs. Confidentiality

A. General Tension

Confidentiality protects client information, but candor to the tribunal may override confidentiality when necessary to correct false material evidence or client fraud in the proceeding.

B. Rule Priority for Exam Purposes

Situation	Confidentiality Controls?	Candor Controls?
Client admits past unrelated mistake not before Court	Usually yes	Usually no
Client intends to testify falsely in Tax Court	No, not if false evidence would be offered	Yes
Client already gave false material testimony	No, if disclosure is necessary after other steps fail	Yes
Client tells practitioner embarrassing but irrelevant fact	Yes	No
Client used practitioner's filing to mislead Court	No, if correction is necessary	Yes
Client plans future fraud using practitioner's services	Confidentiality may allow or require limited disclosure depending on rule	Fraud-prevention duties apply

C. Example

Facts

Taxpayer privately admits that the mileage log submitted to the Court was created after trial notice and is false. Taxpayer refuses to correct it.

Analysis

Practitioner must counsel Taxpayer to correct the record. If Taxpayer refuses and the false evidence is material, Practitioner must take reasonable remedial measures, which may include disclosure to the Court.

XII. Client Fraud

A. What Counts as Client Fraud

Client fraud may involve:

- Fabricating deductions;
 - Hiding income;
 - Backdating records;
 - Submitting false affidavits;
 - Lying under oath;
 - Misleading the Court about settlement authority;
 - Concealing relevant documents;
 - Using practitioner letters to mislead IRS counsel;
 - Creating false records after audit begins;
 - Misrepresenting business purpose;
 - Using nominee accounts to hide assets.
-

B. Fraud vs. Weak Case

Situation	Fraud?	Explanation
Client lacks receipts but honestly remembers expense	No	Weak proof is not fraud.
Client estimates expenses and labels them estimates	No	Not false if clearly disclosed.
Client fabricates receipts	Yes	False evidence.
Client claims deduction based on debatable law	No, if good-faith basis exists	Legal dispute, not fraud.
Client hides bank account after discovery request	Yes	Concealment of evidence.
Client gives incomplete records by mistake	Not necessarily	Depends on knowledge and intent.
Client tells witness to lie	Yes	Fraud and false evidence.

XIII. Practitioner Must Not Assist Fraud

A. Prohibited Assistance

A practitioner must not assist a client by:

- Drafting false affidavits;
- Submitting fake documents;
- Advising how to hide income;
- Coaching false testimony;
- Mislabeling personal expenses as business expenses;
- Preparing false stipulations;
- Sending misleading letters to IRS counsel;
- Destroying or withholding discoverable documents;
- Continuing a filing position known to be fraudulent.

B. Permitted Advice

A practitioner may:

- Explain legal consequences;
 - Advise client not to commit fraud;
 - Discuss lawful alternatives;
 - Help correct prior false filings;
 - Counsel client to amend or supplement;
 - Make a good-faith legal argument;
 - Challenge IRS proof where no false evidence is used;
 - Protect valid privileges and objections.
-

XIV. Statements to IRS Counsel

A. Rule

IRS counsel is not the tribunal, but the practitioner still must be truthful when dealing with IRS counsel.

A practitioner must not knowingly:

- Make false statements of material fact or law to IRS counsel;
 - Fail to disclose a material fact when disclosure is necessary to avoid assisting client fraud, unless confidentiality rules prohibit disclosure.
-

B. Examples

Statement to IRS Counsel	Ethical Issue
"My client has no bank accounts," when practitioner knows of hidden accounts	False material fact
"The receipts are original," when practitioner knows they are fabricated	False material fact
"The client approved settlement," when client did not	False material fact
"All documents have been produced," when practitioner knows responsive documents were hidden	False material fact and discovery issue
"We disagree with your legal theory"	Permissible advocacy
"We do not admit liability"	Permissible litigation position

XV. Discovery and Evidence Preservation

A. Practitioner Must Not Obstruct Evidence

A practitioner may not:

- Destroy relevant documents;
 - Tell client to destroy documents;
 - Alter records;
 - Conceal documents with evidentiary value;
 - Falsify evidence;
 - Assist a witness to testify falsely;
 - Improperly obstruct IRS access to discoverable information;
 - Disobey Court discovery orders.
-

B. Evidence Preservation Table

Client Request	Proper Response
“Can I throw away the old receipts?”	Advise preservation if relevant.
“Can we recreate invoices and pretend they are original?”	Refuse; explain false evidence problem.
“Do not produce this bank statement.”	Analyze privilege/objection; do not conceal discoverable evidence.
“Tell the witness to say the expense was business.”	Refuse to coach false testimony.
“Can we estimate mileage?”	Only if clearly disclosed as estimate and legally supportable.
“Can we backdate the log?”	Refuse; backdating is false evidence.

XVI. False Stipulations and Settlements

A. Stipulations

A practitioner must not enter into a stipulation known to be false.

Examples:

- Stipulating taxpayer did not receive income when practitioner knows income was received;
 - Stipulating documents are authentic when practitioner knows they are fabricated;
 - Stipulating business purpose when practitioner knows transaction was sham;
 - Stipulating no penalties apply based on false facts.
-

B. Settlement Authority

A practitioner must not falsely state that the client approved a settlement.

Example

Practitioner believes settlement is in client's best interest. Client refuses. Practitioner tells IRS counsel and the Court that settlement is approved.

Analysis

This is a false statement of material fact and violates client authority, candor, and truthfulness duties.

XVII. Adverse Legal Authority

A. Duty to Disclose

A practitioner must disclose directly adverse controlling legal authority if opposing counsel has not disclosed it.

B. How to Handle Adverse Authority

The practitioner should:

- Disclose the authority;
 - Explain why it is distinguishable if possible;
 - Argue for modification, limitation, or nonextension where appropriate;
 - Preserve good-faith arguments;
 - Avoid pretending the law does not exist.
-

C. Example

Facts

A controlling appellate case for the taxpayer's venue rejects the exact legal argument Practitioner is making. IRS counsel does not cite it.

Analysis

Practitioner must disclose the controlling directly adverse authority and may then argue why the case is distinguishable or should not control.

XVIII. Client Perjury

A. Before Perjury Occurs

If the client plans to lie:

- Warn client not to lie;
 - Explain legal consequences;
 - Refuse to present known false testimony;
 - Consider withdrawal;
 - Avoid revealing unnecessary confidential information unless required.
-

B. After Perjury Occurs

If client lies and refuses to correct:

- Practitioner must take reasonable remedial measures;
 - Disclosure to the Court may be required if necessary;
 - Practitioner must not rely on the false testimony in argument;
 - Practitioner must not ask questions designed to repeat or strengthen the falsehood.
-

C. Perjury Table

Timing	Practitioner Duty
Client says before trial, "I will lie"	Counsel client, refuse false testimony, consider withdrawal.
Client unexpectedly lies during testimony	Seek recess, counsel correction, take remedial measures.
Client admits after trial testimony was false	Seek correction; disclose if necessary.
Practitioner merely suspects lie	Investigate; do not accuse without basis.
Practitioner knows testimony is false	Do not offer or rely on it; remediate if already offered.

XIX. Fraud Discovered After Filing

A. Common Situation

Practitioner files a motion, status report, petition, stipulation, or brief based on information from the client. Later, Practitioner learns the information was false.

B. Required Response

Practitioner should:

1. Determine whether the statement was material.
2. Determine whether the statement was false when made.
3. Determine whether the Court is still relying on the statement.
4. Discuss the issue with client.
5. Request client consent to correct.
6. Correct the record if required.
7. Withdraw if continued representation would assist fraud.
8. Disclose if necessary as a remedial measure.

C. Example

Facts

Practitioner filed a motion stating Taxpayer was hospitalized on the trial date. Practitioner later learns Taxpayer was not hospitalized and used the excuse to delay trial.

Analysis

The statement was material to the Court's ruling. Practitioner must seek correction and cannot allow the Court to rely on a false statement.

XX. Fraud Discovered After the Case Ends

A. Exam Point

The duty of candor to the tribunal generally continues until the conclusion of the proceeding.

After the proceeding is fully concluded, the practitioner must still consider confidentiality, fraud-prevention rules, professional misconduct rules, and any applicable law.

B. Practical Analysis

Ask:

- Is the Tax Court proceeding still pending?
 - Is a motion for reconsideration, appeal, or decision finality issue still active?
 - Did the false evidence affect the Court's decision?
 - Did the client use practitioner services to commit the fraud?
 - Does a confidentiality exception apply?
 - Is withdrawal still possible or meaningful?
-

XXI. Withdrawal

A. When Withdrawal May Be Required

Withdrawal may be required when continued representation would cause the practitioner to violate ethics rules or law.

Examples:

- Client insists on presenting false evidence;
- Client demands false statement to Court;
- Client uses practitioner's services to commit fraud;
- Client refuses to correct false material evidence;
- Client demands that practitioner conceal discoverable evidence;
- Practitioner cannot continue without misleading the Court.

B. Withdrawal Alone May Be Insufficient

If the false evidence remains before the Court, withdrawing without correcting the falsehood may not satisfy the duty of candor.

C. Withdrawal Table

Situation	Withdrawal Enough?	Explanation
Client plans future fraud but no false statement made yet	Maybe	Withdrawal may prevent assistance.
False testimony already given and Court may rely on it	Usually no	Remedial measures may require correction/disclosure.
Practitioner made false statement unknowingly and later learns truth	No	Practitioner must correct material false statement.
Client refuses to produce discoverable documents	Maybe not	Must avoid assisting concealment; Court orders matter.
Client asks practitioner to submit fake receipts	Refuse; withdrawal may be needed	Do not offer known false evidence.

XXII. Remedial Disclosure

A. When Disclosure May Be Necessary

Disclosure may be necessary when:

- False evidence has been submitted;
- The false evidence is material;
- The practitioner knows it is false;
- The client refuses to correct it;
- Other measures will not remedy the problem;
- The Court may rely on the false evidence.

B. Scope of Disclosure

Disclosure should generally be limited to what is reasonably necessary to remedy the false evidence or fraud.

The practitioner should not reveal unrelated client confidences.

C. Example

Facts

Taxpayer submits fake charitable donation receipts. Practitioner learns they are fake after trial but before decision. Taxpayer refuses to correct the record.

Analysis

Practitioner must take reasonable remedial measures. If counseling the client fails, disclosure to the Court may be required to prevent reliance on false evidence.

XXIII. Good-Faith Arguments Are Allowed

A. Permissible Advocacy

A practitioner may:

- Argue that the IRS has not met its burden;
 - Challenge the credibility of IRS evidence;
 - Argue legal interpretation in good faith;
 - Distinguish adverse authority;
 - Argue for extension, modification, or reversal of law;
 - Assert privilege or valid discovery objections;
 - Decline to admit facts not proven by the IRS.
-

B. Not Permissible

A practitioner may not:

- Deny facts known to be true if doing so misleads the Court;
 - Present false evidence;
 - Make false factual claims;
 - Hide controlling adverse authority;
 - Use technical objections to conceal fraud;
 - Argue from evidence known to be false.
-

XXIV. Tax Court Examples

Example 1 — Fake Mileage Log

Facts

Taxpayer creates a mileage log after receiving the notice of deficiency and backdates it. Practitioner learns the log is fake.

Answer

Practitioner must not submit the log. If already submitted, Practitioner must counsel correction and take remedial measures if Taxpayer refuses.

Example 2 — False Settlement Authority

Facts

Practitioner tells IRS counsel that Taxpayer approved settlement, even though Taxpayer rejected it.

Answer

This is a false material statement and violates both truthfulness and client-authority duties.

Example 3 — Undisclosed Controlling Case

Facts

Practitioner knows controlling appellate authority directly rejects the client's argument. IRS counsel fails to cite it.

Answer

Practitioner must disclose the controlling adverse authority and may then distinguish it or argue for a good-faith change in law.

Example 4 — Client Lies About Records

Facts

Taxpayer testifies that all receipts were lost in a flood. During a break, Taxpayer admits the receipts never existed.

Answer

Practitioner must counsel Taxpayer to correct testimony. If Taxpayer refuses, Practitioner must take reasonable remedial measures, potentially including disclosure to the Court.

Example 5 — Hidden Bank Account

Facts

Taxpayer tells Practitioner not to disclose a foreign account responsive to discovery because “the IRS will never find it.”

Answer

Practitioner must not assist concealment. Practitioner should advise compliance, assert only valid objections, and consider withdrawal or remedial steps if fraud continues.

Example 6 — Honest Estimate

Facts

Taxpayer lacks exact mileage records but gives a clearly labeled estimate based on calendar entries and business appointments.

Answer

This is not automatically false evidence if honestly described as an estimate and legally supportable. Practitioner must not label it as a contemporaneous mileage log if it is not.

XXV. High-Yield Tables

A. Candor Red Flags

Red Flag	Issue
“Just say I never received it.”	False statement to tribunal.
“We can recreate receipts.”	False evidence risk.
“Do not mention that case.”	Adverse authority issue.
“Tell IRS counsel I approved settlement.”	False material statement and client authority problem.
“I’ll testify that I gave you all records.”	Possible perjury.
“Destroy those bank statements.”	Evidence obstruction.
“Backdate the invoice.”	Fraud and false evidence.
“The judge will never know.”	Intentional misconduct.

B. Practitioner Response Table

Problem	First Response	If Client Refuses
Client plans false testimony	Counsel against it	Refuse to offer; consider withdrawal
Client already lied	Urge correction	Remedial measures, possibly disclosure
Fake document offered	Demand correction	Correct/disclose if necessary
Hidden adverse authority	Disclose authority	Distinguish or argue good-faith change
Client seeks fraud assistance	Refuse assistance	Withdraw if needed
False statement to IRS counsel	Correct if material	Withdrawal/disclosure analysis
Evidence destruction request	Instruct preservation	Refuse assistance; consider withdrawal

C. Candor vs. Advocacy Table

Permitted Advocacy	Prohibited Conduct
IRS failed to prove income item	Client did not receive income, when practitioner knows client did
Receipts are insufficient under substantiation rules	Fake receipts prove deduction
Good-faith challenge to penalty	False reliance story
Distinguishing adverse authority	Hiding controlling adverse authority
Valid privilege objection	Concealing nonprivileged evidence
Settlement negotiation	False statement that client approved settlement

XXVI. Exam Attack Outline

When answering a USTCP candor or fraud question:

1. Identify the statement, testimony, document, or omission.
2. Determine whether it involves the Tax Court, IRS counsel, discovery, or a third person.
3. Determine whether the issue is fact, law, evidence, or client fraud.
4. Identify the practitioner's mental state: suspicion, reasonable belief, or knowledge.
5. Determine whether the issue is material.
6. If false evidence has not yet been offered, refuse to offer it.
7. If false evidence has already been offered, counsel client to correct it.
8. If client refuses, take reasonable remedial measures.
9. If necessary, disclose to the tribunal.
10. Analyze confidentiality but explain that candor may override confidentiality in tribunal false-evidence situations.
11. Consider withdrawal, but state that withdrawal alone may not be enough.
12. Conclude whether practitioner may continue, must correct, must withdraw, or must disclose.

XXVII. Student Rule Statements

A. Candor Rule Statement

A Tax Court practitioner must not knowingly make a false statement of fact or law to the Court, fail to correct a false material statement previously made to the Court, fail to disclose controlling directly adverse authority not disclosed by opposing counsel, or offer evidence known to be false.

B. False Evidence Rule Statement

If a practitioner, the client, or a witness called by the practitioner has offered material evidence and the practitioner later knows it is false, the practitioner must take reasonable remedial measures, including disclosure to the Court if necessary.

C. Client Fraud Rule Statement

A practitioner must not counsel or assist a client in conduct the practitioner knows is criminal or fraudulent, although the practitioner may discuss legal consequences and advise the client about lawful alternatives.

D. Confidentiality Rule Statement

Confidentiality is a core duty, but in tribunal proceedings the duty of candor may require disclosure when necessary to remedy known false material evidence or client fraud affecting the proceeding.

E. Withdrawal Rule Statement

Withdrawal may be required when continued representation would violate ethics rules or law, but withdrawal alone may not cure false evidence already before the Court.

F. Adverse Authority Rule Statement

A practitioner must disclose controlling legal authority known to be directly adverse to the client's position if opposing counsel has not disclosed it.

XXVIII. Bottom-Line Rule

In U.S. Tax Court practice, a practitioner may advocate forcefully but may not mislead the Court, present false evidence, hide controlling law, assist client fraud, or allow material false evidence to remain uncorrected. If the client insists on fraud or false testimony, the practitioner must counsel correction, refuse assistance, consider withdrawal, and take reasonable remedial measures, including disclosure to the Court when necessary.

Fees, Contingent Fees, and Written Fee Terms

I. Course Purpose

This module teaches students how to identify and analyze legal ethics issues involving fees in U.S. Tax Court practice.

The USTCP exam may test fee issues through fact patterns involving:

- Unreasonable or excessive fees;
 - Poorly explained fee arrangements;
 - Failure to communicate written fee terms;
 - Contingent fees in Tax Court litigation;
 - Contingent fees in IRS administrative matters;
 - Third-party payment of fees;
 - Fee sharing;
 - Nonrefundable or flat fees;
 - Expenses and litigation costs;
 - Client consent and settlement authority;
 - Court inquiry into fee arrangements.
-

II. Governing Rules

A. Main Rules Tested

Authority	Rule	Core Point
Tax Court Rule 201	Conduct before the Court	Practitioners must follow the letter and spirit of the ABA Model Rules.
Tax Court Rule 201(b)	Statement of Employment	The Court may require a practitioner to provide a sworn statement of the terms and circumstances of employment.
ABA Model Rule 1.5(a)	Reasonable Fees	A practitioner may not make an agreement for, charge, or collect an unreasonable fee or unreasonable expense.
ABA Model Rule 1.5(b)	Written Fee Communication	Scope, fee basis or rate, and expenses must be communicated to the client, preferably in writing.
ABA Model Rule 1.5(c)	Contingent Fees	Contingent fee agreements must be in writing, signed by the client, and state how the fee and expenses are calculated.
ABA Model Rule 1.5(d)	Prohibited Contingent Fees	Contingent fees are prohibited in certain domestic relations and criminal-defense matters.
ABA Model Rule 1.5(e)	Fee Division	Lawyers not in the same firm may divide fees only if rule requirements are met.
ABA Model Rule 1.8(e)	Financial Assistance	A lawyer generally may not provide financial assistance to a client in litigation, except for litigation costs and narrow indigent-client exceptions.
ABA Model Rule 1.8(f)	Third-Party Payment	A lawyer may accept payment from someone other than the client only with client consent, no interference, and protection of confidentiality.
Circular 230 § 10.27	Tax Practice Fees	Contingent fees are restricted in IRS matters but permitted in certain listed circumstances, including judicial proceedings under the Internal Revenue Code.

III. Core Exam Rule

A Tax Court practitioner may charge a fee only if the fee is reasonable, clearly communicated, and consistent with the ABA Model Rules, Tax Court rules, and any applicable tax-practice restrictions. A contingent fee in a Tax Court case may be permissible, but it must be reasonable, written, signed by the client, and clear about percentages, expenses, recovery, and client responsibility.

IV. Reasonable Fees

A. General Rule

A practitioner may not:

- Make an agreement for an unreasonable fee;
 - Charge an unreasonable fee;
 - Collect an unreasonable fee;
 - Charge unreasonable expenses;
 - Use a confusing fee agreement to overreach the client.
-

B. Reasonableness Factors

Fee reasonableness may depend on:

- Time and labor required;
 - Novelty and difficulty of the issues;
 - Skill required;
 - Whether the matter prevents the practitioner from taking other work;
 - Customary fee for similar work;
 - Amount involved and result obtained;
 - Time limits imposed by client or circumstances;
 - Nature and length of client relationship;
 - Practitioner's experience, reputation, and ability;
 - Whether fee is fixed or contingent.
-

C. Tax Court Examples

Fee Situation	Ethical Issue	Likely Result
Practitioner charges \$3,000 for a routine small case petition and review	Reasonableness	Likely permissible if clearly explained and reasonable for work.
Practitioner charges \$50,000 for a simple petition with no trial work	Excessive fee concern	May be unreasonable depending on facts.
Practitioner charges a premium because trial is next week	Time pressure	May be reasonable if urgent work is required and client is informed.
Practitioner bills for work never performed	Dishonesty and unreasonable fee	Improper.
Practitioner charges for unnecessary motions to increase fees	Unreasonable fee and diligence issue	Improper.
Practitioner charges client for Court filing fees and expert expenses	Expenses	Permissible if reasonable and explained.

V. Fee Communication and Written Fee Terms

A. General Rule

The practitioner must communicate:

- Scope of representation;
- Basis or rate of fee;
- Expenses for which the client is responsible;
- Any changes in the fee basis, rate, or expenses.

This communication should occur before or within a reasonable time after representation begins.

B. Why Written Fee Terms Matter

Written fee terms:

- Protect the client;
 - Prevent misunderstanding;
 - Define the practitioner's scope of work;
 - Clarify what is included and excluded;
 - Reduce disputes over expenses;
 - Help show informed consent;
 - Help defend against claims of overreaching.
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C. Required or Recommended Written Terms

Fee Term	Why It Matters
Client identity	Clarifies who is represented.
Matter description	Identifies Tax Court case, docket, tax years, and issues.
Scope of work	States whether representation includes petition, settlement, trial, briefing, appeal, or limited appearance.
Fee type	Hourly, flat, fixed, contingent, hybrid, or capped fee.
Rate or amount	States hourly rate, flat amount, percentage, or formula.
Retainer treatment	Explains whether advance payment goes to trust or operating account under applicable law.
Expenses	Identifies Court filing fee, transcripts, experts, copying, travel, postage, research, and other costs.
Billing frequency	Explains when invoices are sent.
Payment due date	Explains when client must pay.
Nonpayment consequences	Explains whether withdrawal may be sought if fees are not paid.
Settlement authority	Confirms client controls settlement.
Contingent-fee terms	Gives percentage, calculation method, expense deductions, and closing statement requirement.
Limited scope	Explains any limited appearance or restricted task.
Third-party payer	Explains who pays and who controls representation.
Signature	Shows agreement and consent.

VI. Types of Fee Arrangements

A. Hourly Fees

Hourly fee terms should state:

- Hourly rate for each practitioner or staff member;
- What tasks are billable;
- Billing increments;
- Expense treatment;
- When invoices are sent;
- When payment is due.

Example

Practitioner charges \$250 per hour for Tax Court representation. The engagement letter states that client will also pay the filing fee, transcript costs, and expert witness fees.

Analysis

This is generally permissible if the rate and expenses are reasonable and clearly communicated.

B. Flat Fees

A flat fee charges one set amount for a defined scope of work.

Examples:

- \$1,500 to prepare and file a Tax Court petition;
- \$3,500 for settlement conference representation;
- \$7,500 for case preparation through calendar call;
- \$15,000 for trial preparation and trial.

Exam Issue

A flat fee is risky if the scope is unclear.

Table

Flat Fee Clause	Problem
“\$5,000 for your tax case”	Too vague; unclear whether trial, motions, or appeal included.
“\$5,000 for petition filing only”	Clear if client understands additional work costs extra.
“\$10,000 through settlement only; trial requires separate agreement”	Clear if explained and reasonable.
“Flat fee is earned even if no work is performed”	May be improper depending on applicable rules and reasonableness.

C. Advance Fees or Retainers

Common types:

Type	Meaning	Exam Concern
Advance fee deposit	Money paid before work is performed	Must be handled under applicable safekeeping rules.
Security retainer	Held to secure future payment	Usually client funds until earned.
Flat fee paid in advance	Fixed payment for defined work	Must still be reasonable and clearly explained.
Availability retainer	Payment to ensure practitioner availability	Must be reasonable and clearly documented.

Exam Point

Calling a payment “nonrefundable” does not make it automatically ethical. The fee must still be reasonable, and unearned amounts may need to be returned depending on the circumstances and applicable law.

D. Hybrid Fees

Hybrid fee arrangements combine multiple methods.

Examples:

- Reduced hourly rate plus success bonus;
- Flat fee through trial plus hourly fee for appeal;
- Hourly fee plus percentage of refund recovery;
- Contingent fee plus client-paid expenses.

Exam Issue

Hybrid fees must be clearly explained because they can confuse clients.

VII. Contingent Fees

A. Definition

A contingent fee is a fee that depends in whole or in part on the outcome of the matter.

Examples:

- Percentage of refund recovered;
 - Percentage of tax saved;
 - Fee owed only if deficiency is reduced;
 - Bonus if penalties are removed;
 - Reduced fee if IRS position is sustained;
 - Reimbursement or guarantee if the tax position fails.
-

B. Contingent Fee in Tax Court

A contingent fee may be permissible in a Tax Court judicial proceeding if:

- It is not prohibited by law;
- The total fee is reasonable;
- The agreement is in writing;
- The client signs the agreement;
- The method of calculation is clearly stated;
- The agreement explains percentages for settlement, trial, and appeal;
- The agreement explains litigation expenses;
- The agreement states whether expenses are deducted before or after the contingent fee;
- The client is told what expenses remain payable regardless of outcome;
- At the end of the matter, the client receives a written closing statement.

C. Written Contingent Fee Requirements

Requirement	Explanation
Writing	Contingent fee agreement must be written.
Client signature	Client must sign the agreement.
Percentage or formula	Agreement must state how the fee is calculated.
Settlement/trial/appeal percentages	If percentages change by stage, each must be stated.
Expense treatment	Agreement must state what expenses are deducted.
Before/after deduction	Agreement must say whether expenses are deducted before or after calculating the fee.
Client liability for expenses	Agreement must state whether client owes expenses even if client loses.
Closing statement	At the end, practitioner must provide written statement showing outcome and remittance calculation.

D. Contingent Fee Table

Fee Arrangement	Contingent?	Ethical Concern
"Client pays 30% of refund recovered."	Yes	Must comply with contingent-fee writing rules and tax-practice restrictions.
"Client pays \$5,000 win or lose."	No	Must be reasonable and clearly communicated.
"Client pays \$2,000 plus 10% of penalties removed."	Yes	Hybrid contingent fee; must be written and signed.
"Client pays nothing unless deficiency is reduced."	Yes	Must comply with contingent-fee rules.
"Client gets fee refunded if IRS challenges the position."	Yes	Contingent fee or guarantee-type arrangement.
"Client pays hourly rate regardless of outcome."	No	Regular fee rules apply.

VIII. Contingent Fees in IRS Administrative Matters vs. Tax Court Cases

A. Key Distinction

Students must separate:

1. IRS administrative matters; and
2. Tax Court judicial proceedings.

A fee arrangement that may be restricted before the IRS may be allowed in a judicial proceeding arising under the Internal Revenue Code.

B. IRS Administrative Matter

Examples of IRS matters:

- Return preparation;
- Refund claim preparation;
- Audit representation;
- Appeals conference;
- Collection matter;
- Correspondence with IRS;
- Written advice to taxpayer;
- Filing documents with IRS.

Contingent fees are generally prohibited in IRS matters unless an exception applies.

C. Tax Court Judicial Proceeding

Examples:

- Deficiency case filed in Tax Court;
- Trial preparation;
- Settlement negotiations in docketed Tax Court case;
- Motions practice;
- Trial;
- Posttrial briefing;
- Appeal-related fee terms if included.

A contingent fee for services in a judicial proceeding arising under the Internal Revenue Code may be allowed, subject to reasonableness and written fee rules.

D. Comparison Table

Matter	Contingent Fee Treatment
Preparing original return	Generally prohibited as contingent fee in IRS practice.
Preparing refund claim before audit notice	Generally restricted.
IRS examination of original return	Exception may allow contingent fee under specific circumstances.
Amended return or refund claim filed within 120 days after written IRS examination notice or challenge	Exception may apply.
Claim for statutory interest or penalties	Exception may apply.
Tax Court case	Contingent fee may be allowed because it is a judicial proceeding under the Internal Revenue Code.
Tax Court appeal	May be allowed if part of judicial proceeding and otherwise ethical.

IX. Unreasonable or Improper Contingent Fees

A. A Contingent Fee Can Still Be Unreasonable

Even if contingent fees are allowed, the fee must still be reasonable.

Factors include:

- Risk of no recovery;
- Amount of work required;
- Stage of case when hired;
- Difficulty of issues;
- Amount at stake;
- Skill required;
- Percentage charged;
- Whether case settles quickly;
- Whether client understands expenses;
- Whether practitioner overreached.

B. Examples

Example	Likely Result
25% of refund after full trial with uncertain recovery	Often permissible if written and reasonable.
50% of refund for a simple agreed computation requiring little work	May be unreasonable.
40% of tax saved plus all expenses, not explained in writing	Improper because terms are unclear and possibly unreasonable.
Fee percentage increases for trial and appeal, clearly stated in signed writing	Potentially permissible if reasonable.
Contingent fee based on result in criminal tax case	Prohibited if criminal defense.
Practitioner takes contingent fee but fails to give closing statement	Improper under contingent-fee rule.

X. Written Closing Statement in Contingent Fee Matter

A. Required at Conclusion

At the end of a contingent-fee matter, the practitioner must provide a written statement showing:

- Outcome of the matter;
- Recovery, if any;
- Method used to calculate the fee;
- Expenses deducted;
- Amount remitted to the client.

B. Example Closing Statement

Item	Amount
Refund recovered	\$40,000
Court costs and expenses	\$1,000
Contingent fee percentage	30%
Fee calculation if expenses deducted first	$30\% \times \$39,000 = \$11,700$
Amount to client	\$27,300

Exam Point

If the fee agreement does not say whether expenses are deducted before or after the contingent fee is calculated, the agreement is deficient.

XI. Expenses and Litigation Costs

A. Common Tax Court Expenses

Expenses may include:

- Tax Court filing fee;
 - Transcript costs;
 - Expert witness fees;
 - Appraisal fees;
 - Copying and scanning;
 - Postage;
 - Travel;
 - Court reporter charges;
 - Legal research database charges;
 - Subpoena costs;
 - Records retrieval fees.
-

B. Expense Rule

Expenses must be:

- Reasonable;
 - Communicated to the client;
 - Consistent with the fee agreement;
 - Properly documented;
 - Not inflated or hidden.
-

C. Expenses Table

Expense Practice	Ethical Result
Charging actual transcript cost disclosed to client	Proper.
Charging hidden 300% markup on copying without disclosure	Problematic.
Billing client for expert without prior discussion	Risky if unexpected or unreasonable.
Deducting expenses from recovery without explaining calculation	Improper in contingent fee matter.
Charging client for unnecessary travel	May be unreasonable.
Advancing litigation costs with repayment contingent on outcome	Generally permitted under ABA Model Rule 1.8(e).

XII. Third-Party Payment of Fees

A. Rule

A practitioner may accept compensation from someone other than the client only if:

- The client gives informed consent;
 - The payer does not interfere with professional judgment;
 - The payer does not interfere with the client-practitioner relationship;
 - Client confidentiality remains protected.
-

B. Common Tax Court Examples

Payer	Client	Ethics Risk
Parent pays adult child's Tax Court fee	Adult child	Parent may try to control case.
Corporation pays shareholder's fee	Shareholder	Entity may influence strategy.
Promoter pays investor's fee	Investor	Promoter may suppress facts.
Employer pays officer's payroll tax defense	Officer	Employer may want officer not to blame company.
Spouse pays other spouse's fee	Represented spouse	Conflict may arise in innocent spouse issues.

C. Exam Rule

The person paying is not automatically the client.

The client controls:

- Objectives;
- Settlement decisions;
- Confidential communications;
- Whether to accept advice;
- Whether to waive conflicts.

XIII. Fee Sharing

A. Rule

Lawyers or practitioners not in the same firm may divide a fee only if:

- The division is proportional to services performed, or each assumes joint responsibility;
 - The client agrees to the arrangement, including each share;
 - The agreement is confirmed in writing;
 - The total fee is reasonable.
-

B. Fee Sharing Table

Arrangement	Ethical Concern
Practitioner A refers case to Practitioner B and gets 20% without client written agreement	Improper.
Practitioner A and B both work on case and disclose fee split in writing	Potentially proper.
Client agrees orally to fee split	Insufficient if written confirmation required.
Total fee is excessive despite proper disclosure	Improper.
Practitioner pays nonlawyer a referral percentage	Serious issue; generally prohibited under fee-sharing principles.

XIV. Nonpayment of Fees and Withdrawal

A. General Rule

A practitioner may seek withdrawal if the client fails to pay fees, but withdrawal must comply with Tax Court procedures and professional duties.

The practitioner may not simply abandon the client.

B. Proper Steps

If the client does not pay:

1. Review the fee agreement.
 2. Communicate with the client.
 3. Avoid prejudicing the client.
 4. Determine whether withdrawal is allowed.
 5. File a proper motion to withdraw if required.
 6. Continue complying with Court orders until withdrawal is allowed.
 7. Protect client files and deadlines.
-

C. Example

Practitioner enters a general appearance in Tax Court. Client stops paying. Trial is two weeks away. Practitioner sends a text saying, “I quit,” and stops responding.

Analysis

Improper. The practitioner must follow withdrawal procedures and may not abandon the client, especially near trial.

XV. Limited Scope and Limited Appearance Fees

A. Limited Scope Fee Terms

A practitioner may charge a fee for a limited task, such as:

- Petition review;
- Calendar call appearance;
- Motion to continue;
- Settlement conference;
- Document review;
- Trial preparation consultation.

B. Written Terms Should State

Term	Example
Limited task	“Representation is limited to calendar call on June 10.”
Excluded work	“This agreement does not include trial, briefing, or appeal.”
Fee	“Flat fee of \$1,500.”
Expenses	“Client pays filing, travel, transcript, and copying costs.”
End point	“Representation ends after Notice of Completion is filed.”
Additional work	“Additional services require a separate written agreement.”

XVI. Court Inquiry Into Fee Arrangements

A. Tax Court Rule 201(b)

The Tax Court may require a practitioner to provide a sworn statement about:

- Terms of employment;
 - Circumstances of employment;
 - Fee arrangement;
 - Who is paying;
 - Whether conflicts exist;
 - Whether the practitioner's employment affects professional judgment.
-

B. Exam Examples

Situation	Why Court May Inquire
Promoter pays taxpayer's fees	Possible conflict and third-party control.
Practitioner takes large percentage of refund	Reasonableness concern.
Practitioner represented multiple related clients	Conflict and aggregate settlement risk.
Practitioner promoted transaction at issue	Personal interest and fee conflict.
Client claims practitioner settled without authority	Fee and authority dispute.

XVII. Fee Disputes and Client Files

A. Fee Dispute Problems

Fee disputes can create ethics issues if the practitioner:

- Withholds necessary case materials improperly;
 - Misses deadlines because client has not paid;
 - Threatens client unfairly;
 - Refuses to communicate;
 - Uses confidential information to pressure payment;
 - Continues representation despite a personal conflict.
-

B. Exam Point

A practitioner must protect the client's interests even when fees are disputed.

XVIII. Client Authority and Settlement Fees

A. Settlement Belongs to the Client

Fee arrangements must not give the practitioner control over settlement.

Improper terms include:

- “Practitioner may accept any settlement that produces a fee.”
 - “Client may not reject settlement if practitioner recommends acceptance.”
 - “Practitioner receives penalty if client refuses settlement.”
 - “Practitioner can settle to guarantee payment.”
-

B. Proper Rule

The practitioner may advise, negotiate, and recommend settlement, but the client decides whether to settle.

XIX. Fee Agreement Red Flags

Red Flag	Ethics Issue
Fee terms are oral only in a contingent-fee matter	Contingent fee must be written and signed.
Client does not understand expenses	Inadequate fee communication.
Practitioner charges percentage of refund for original return preparation	Circular 230 concern.
Promoter pays taxpayer's litigation fees	Third-party payment and conflict risk.
Practitioner controls settlement because of fee interest	Client authority and conflict issue.
Practitioner bills for work not performed	Dishonesty and unreasonable fee.
Nonrefundable fee even if no work is performed	Reasonableness and refund issue.
Fee split not disclosed to client	Fee-division problem.
Practitioner withdraws without Court approval	Improper abandonment.
Contingent fee agreement does not explain expenses	Defective agreement.

XX. Exam Examples

Example 1 — Proper Hourly Fee

Practitioner agrees to represent Taxpayer in a deficiency case at \$250 per hour plus reasonable expenses. The engagement letter explains scope, rates, expenses, and billing schedule.

Answer

Likely proper if the rate and expenses are reasonable.

Example 2 — Defective Contingent Fee

Practitioner agrees orally to take 30% of any refund recovered in Tax Court. Nothing is written or signed.

Answer

Improper. A contingent fee agreement must be in writing and signed by the client.

Example 3 — Expense Deduction Problem

Written contingent fee agreement says Practitioner receives 35% of recovery but does not state whether expenses are deducted before or after calculating the fee.

Answer

Defective. The agreement must state how litigation expenses are deducted and whether they are deducted before or after the contingent fee is calculated.

Example 4 — Judicial Proceeding Contingent Fee

Taxpayer hires Practitioner after filing a Tax Court petition. Practitioner charges 25% of any deficiency reduction achieved through settlement or trial. The agreement is written, signed, reasonable, and explains expenses.

Answer

Potentially permissible because the services are in a judicial proceeding under the Internal Revenue Code and the agreement satisfies contingent-fee requirements.

Example 5 — IRS Return Preparation Contingent Fee

Practitioner prepares an original return for 20% of the refund shown on the return.

Answer

High-risk and generally improper under Circular 230 contingent-fee restrictions for matters before the IRS.

Example 6 — Third-Party Payer

Promoter pays Practitioner to represent investors in Tax Court. Promoter tells Practitioner not to argue that the transaction was misleading.

Answer

Improper interference. The investors are the clients. Practitioner must preserve independent judgment, confidentiality, and client control.

Example 7 — Fee Sharing Without Writing

Practitioner A refers a Tax Court case to Practitioner B. Practitioner B agrees to pay Practitioner A 25% of the fee, but the client is not told.

Answer

Improper. Fee division requires client agreement, written confirmation, and a reasonable total fee.

Example 8 — Nonpayment Near Trial

Client fails to pay the final invoice two weeks before trial. Practitioner stops preparing and fails to appear at calendar call.

Answer

Improper. Practitioner may seek withdrawal if allowed, but cannot abandon the client or ignore Court obligations.

XXI. High-Yield Tables

A. Fee Type Table

Fee Type	Allowed?	Key Requirement
Hourly fee	Yes	Must be reasonable and communicated.
Flat fee	Yes	Must define scope clearly.
Contingent fee in Tax Court case	Usually possible	Must be reasonable, written, signed, and clear.
Contingent fee for original return refund	Generally restricted	Circular 230 issue.
Hybrid fee	Yes	Must be clearly explained and reasonable.
Fee split with outside practitioner	Yes, if requirements met	Client agreement, writing, reasonable total fee.
Third-party paid fee	Yes, if requirements met	Client consent, no interference, confidentiality.
Excessive fee	No	Unreasonable fees are prohibited.

B. Contingent Fee Checklist

Question	Required Answer
Is the matter a Tax Court judicial proceeding?	If yes, contingent fee may be allowed.
Is the fee reasonable?	Must be yes.
Is the agreement written?	Must be yes.
Did the client sign?	Must be yes.
Does it state percentage or formula?	Must be yes.
Does it state settlement/trial/appeal percentages?	Must be yes if percentages differ.
Does it explain expenses?	Must be yes.
Does it say whether expenses are deducted before or after fee calculation?	Must be yes.
Does it explain expenses owed win or lose?	Must be yes.
Was a closing statement provided at the end?	Must be yes.

C. Reasonableness Table

Factor	How It Applies in Tax Court
Time and labor	Trial preparation, discovery, stipulations, briefs.
Difficulty	Complex valuation, penalties, jurisdiction, partnership issues.
Skill	Tax Court procedure and evidence knowledge.
Customary fee	Compare to similar tax litigation work.
Amount involved	Deficiency, penalties, interest, refund.
Result obtained	Relevant but does not justify unreasonable fee alone.
Urgency	Trial setting or deadline may justify higher fee if explained.
Experience	USTCP experience may support higher rate.
Fixed or contingent	Contingent fee risk may support higher percentage.

XXII. Student Rule Statements

A. Reasonable Fee Rule Statement

A Tax Court practitioner may not make an agreement for, charge, or collect an unreasonable fee or unreasonable expense.

B. Written Fee Terms Rule Statement

The practitioner must communicate the scope of representation and the basis or rate of fees and expenses, preferably in writing, before or within a reasonable time after representation begins.

C. Contingent Fee Rule Statement

A contingent fee agreement must be in writing, signed by the client, and must state how the fee is calculated, including percentages, expense deductions, whether expenses are deducted before or after the fee, and what expenses the client remains liable for regardless of outcome.

D. Tax Court Contingent Fee Rule Statement

A contingent fee may be permissible in a Tax Court judicial proceeding arising under the Internal Revenue Code if the fee is reasonable and the contingent-fee agreement satisfies the writing and disclosure requirements.

E. IRS Administrative Contingent Fee Rule Statement

A practitioner generally may not charge a contingent fee for services in a matter before the IRS unless a specific exception applies.

F. Third-Party Payment Rule Statement

A practitioner may accept payment from someone other than the client only if the client gives informed consent, the payer does not interfere with professional judgment or the client relationship, and confidentiality is protected.

G. Fee Division Rule Statement

A fee division between practitioners not in the same firm is permitted only if the division is proportional to services or each assumes joint responsibility, the client agrees to the arrangement including each share, the agreement is confirmed in writing, and the total fee is reasonable.

XXIII. Exam Attack Outline

When answering a USTCP fee ethics question:

1. Identify the fee type.
 2. Ask whether the fee is reasonable.
 3. Determine whether fee terms were communicated.
 4. Determine whether written terms were required.
 5. If contingent, confirm written agreement signed by client.
 6. Check whether the matter is an IRS administrative matter or Tax Court judicial proceeding.
 7. Check whether expenses were explained.
 8. Check whether the client remains liable for expenses.
 9. Check whether third-party payment exists.
 10. Check whether fee sharing exists.
 11. Check whether the fee creates a conflict or affects settlement advice.
 12. Consider whether Tax Court may inquire into employment terms.
 13. Conclude whether the arrangement is proper, defective, or prohibited.
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XXIV. Bottom-Line Rule

For USTCP exam purposes, fees must be reasonable, clearly communicated, and consistent with written-fee requirements. Contingent fees in Tax Court cases may be allowed, but the agreement must be written, signed, and clear about percentages, expenses, and final distribution. Contingent fees in IRS administrative matters are more restricted. Third-party payment and fee sharing are not automatically improper, but they require client consent, written confirmation where required, protection of confidentiality, and no interference with independent judgment.

Client Communication, Settlement Authority, and Contact Rules

I. Course Purpose

This module teaches students how to analyze legal ethics questions involving:

- Communication between practitioner and client;
- Client authority over objectives and settlement;
- Practitioner authority over litigation means;
- IRS settlement offers;
- Unauthorized settlement decisions;
- Communication with represented taxpayers;
- Communication with unrepresented taxpayers;
- Communication after general or limited appearances;
- Communications involving multiple clients, spouses, entities, and third-party payers.

This topic is highly testable because Tax Court ethics questions often involve whether a practitioner communicated properly, whether the client approved settlement, and whether IRS counsel or opposing counsel may contact a taxpayer directly.

II. Governing Rules

A. Main Rules Tested

Authority	Main Point
Tax Court Rule 201	Tax Court practitioners must follow the letter and spirit of the ABA Model Rules.
Tax Court Rule 24	Governs appearances, representation, limited appearances, withdrawal, and counsel status in Tax Court.
ABA Model Rule 1.2	Client controls objectives and settlement; lawyer consults on means.
ABA Model Rule 1.4	Lawyer must keep client informed, consult with client, respond to reasonable requests, and explain matters enough for informed decisions.
ABA Model Rule 1.6	Lawyer must protect client confidential information.
ABA Model Rule 1.7	Conflicts may affect communication and settlement in joint representation.
ABA Model Rule 3.3	Lawyer must be candid with the tribunal.
ABA Model Rule 4.1	Lawyer must be truthful when communicating with third persons.
ABA Model Rule 4.2	Lawyer may not communicate with a represented person about the matter without counsel's consent or legal authorization.
ABA Model Rule 4.3	Lawyer dealing with an unrepresented person must not imply disinterest and must correct misunderstandings about the lawyer's role.

III. Core Exam Rule

A Tax Court practitioner must keep the client reasonably informed, explain important developments, promptly communicate matters requiring client decisions, obtain client authority for settlement, and avoid improper direct contact with represented persons. The practitioner may advise and negotiate, but the client decides whether to settle.

IV. Client Communication Duties

A. General Rule

A practitioner must:

- Promptly inform the client of decisions or circumstances requiring informed consent;
 - Reasonably consult with the client about how to accomplish the client's objectives;
 - Keep the client reasonably informed about the status of the case;
 - Promptly comply with reasonable requests for information;
 - Explain matters enough for the client to make informed decisions;
 - Tell the client when the client expects assistance the practitioner cannot ethically or legally provide.
-

B. Tax Court Communication Examples

The practitioner should communicate with the client about:

- Petition deadline;
 - Court orders;
 - Trial notice;
 - Calendar call;
 - Discovery requests;
 - Stipulation deadlines;
 - Settlement offers;
 - Risks of trial;
 - Penalty exposure;
 - Burden of proof;
 - Possible sanctions;
 - Need for documents;
 - Limited appearance scope;
 - Withdrawal or substitution;
 - Conflicts of interest;
 - Consequences of missing deadlines.
-

C. Communication Table

Situation	Required Communication
IRS makes settlement offer	Promptly communicate offer and explain consequences.
Court issues order	Tell client what is required and deadline.
Trial date is set	Explain trial preparation, evidence, witnesses, and risks.
Client asks for status update	Respond within a reasonable time.
Conflict develops	Explain conflict, risks, and need for informed consent or withdrawal.
Practitioner cannot legally do what client asks	Explain limitation and lawful alternatives.
Client wants to submit false evidence	Explain that practitioner cannot assist fraud or false evidence.
Limited appearance is ending	Explain that representation ends after proper completion.

V. Reasonably Informed Client Standard

A. What “Reasonably Informed” Means

The client does not need every minor detail, but must receive information important enough to affect the client’s decisions.

The practitioner should provide enough information for the client to understand:

- What is happening;
- What choices must be made;
- What risks exist;
- What deadlines apply;
- What settlement options exist;
- What the practitioner recommends and why;
- What happens if the client refuses or delays.

B. Inadequate Communication Examples

Practitioner Conduct	Why It Is Improper
Fails to tell client about IRS settlement offer	Client controls settlement.
Ignores client's repeated questions about trial date	Fails to keep client informed.
Does not explain that settlement includes penalties	Client cannot make informed decision.
Accepts settlement without client consent	Violates client authority.
Fails to explain limited appearance scope	Client may misunderstand representation.
Does not tell client Court ordered documents due	Client cannot comply or assist.
Hides bad facts to avoid upsetting client	Client cannot make informed decisions.

VI. Client Authority vs. Practitioner Authority

A. Client Controls Objectives

The client decides the major objectives of representation, including:

- Whether to file a petition;
- Whether to settle;
- Whether to concede an issue;
- Whether to proceed to trial;
- Whether to accept or reject an offer;
- Whether to seek innocent spouse relief;
- Whether to appeal, if applicable;
- Whether to authorize disclosure or conflict consent.

B. Practitioner Controls or Guides Means

The practitioner generally handles litigation means, such as:

- Drafting pleadings;
- Legal research;
- Trial strategy;
- Objections;
- Motion practice;
- Witness examination;
- Negotiation tactics;
- Evidence presentation;
- Legal arguments;
- Procedural choices.

The practitioner must still consult with the client when the means materially affect the client's rights, cost, risk, or objectives.

C. Client vs. Practitioner Authority Table

Decision	Who Controls?	Explanation
Whether to settle	Client	Settlement belongs to client.
Whether to accept IRS offer	Client	Practitioner may recommend, but client decides.
Whether to file petition	Client	Filing begins litigation.
Which legal argument to emphasize	Practitioner, after consultation	Usually litigation strategy.
Whether to concede liability	Client if concession affects objective or outcome	Major client decision.
Whether to call a witness	Practitioner, after consultation	Trial means, but client input may matter.
Whether to submit false evidence	Neither	Practitioner cannot assist false evidence.
Whether to withdraw	Court/practitioner under rules	Client cannot force unethical representation.
Whether to waive conflict	Client, if conflict is consentable	Requires informed consent.
Whether to disclose confidential information	Client, unless rule permits/requires disclosure	Confidentiality issue.

VII. Settlement Authority

A. Core Rule

The practitioner must abide by the client's decision whether to settle.

The practitioner may:

- Evaluate settlement offers;
- Recommend settlement;
- Negotiate with IRS counsel;
- Explain litigation risk;
- Explain tax, penalty, and interest consequences;
- Draft settlement documents;
- Communicate client-authorized offers or acceptances.

The practitioner may not:

- Accept settlement without client authorization;
- Reject settlement without communicating it to the client;
- Misstate client authority;
- Pressure client through misleading advice;
- Let fee interest override client decision;
- Allow a third-party payer to control settlement.

B. Settlement Communication Duties

When communicating a settlement offer, the practitioner should explain:

- Amount of deficiency;
 - Penalties;
 - Interest consequences;
 - Conceded issues;
 - Remaining issues;
 - Payment expectations;
 - Collection consequences;
 - Litigation risk;
 - Effect on other tax years;
 - Effect on related parties;
 - Whether settlement is final;
 - Deadlines for response;
 - Alternatives to settlement.
-

C. Settlement Authority Table

Situation	Proper Conduct	Improper Conduct
IRS offers reduced deficiency	Communicate offer to client promptly	Ignore offer because practitioner dislikes it
Client authorizes exact settlement	Accept within authority	Change terms without client approval
Client says “try to settle low”	Negotiate but get approval before final acceptance	Treat vague statement as final authority
Client rejects settlement	Continue representation unless withdrawal grounds exist	Accept anyway because practitioner thinks it is best
Third-party payer wants settlement	Ask client; client decides	Follow payer’s instruction over client
Joint clients disagree	Analyze conflict and authority separately	Accept for both without consent
Client cannot be reached before deadline	Follow prior specific authority if it exists; otherwise seek extension or communicate limits	Invent authority

VIII. Actual Authority, Implied Authority, and Apparent Authority

A. Actual Authority

Actual authority exists when the client clearly authorizes the practitioner to act.

Examples:

- “You may accept the IRS offer of \$20,000 total deficiency and no penalty.”
- “You may offer \$15,000 to settle Count I only.”
- “You may reject any offer that keeps the fraud penalty.”

B. Implied Authority

Implied authority allows the practitioner to take routine actions needed to carry out the representation.

Examples:

- Requesting records from IRS counsel;
- Scheduling a conference;
- Filing routine procedural documents;
- Asking for more time;
- Making legal arguments consistent with client's objectives.

Implied authority does not usually include final settlement unless the client gave clear settlement authority.

C. Apparent Authority

Apparent authority concerns what the other side reasonably believes based on the client's conduct. Ethically, the practitioner should avoid relying on uncertain apparent authority for settlement. The safer exam answer is that the practitioner should obtain clear client consent before accepting settlement.

D. Authority Table

Statement or Fact	Settlement Authority?	Reason
“Do whatever you think is best.”	Risky	Too vague for final settlement unless clarified.
“Accept any offer under \$10,000.”	Yes, if terms match	Specific authority.
“Try to settle this case.”	No final authority	Authority to negotiate, not accept.
“Reject penalties but negotiate tax.”	Partial authority	Must stay within limits.
Client signs Form/letter approving exact settlement	Yes	Clear actual authority.
Third-party payer approves settlement	No	Payer is not the client.
Practitioner believes settlement is wise	No	Practitioner’s judgment does not replace client decision.

IX. Unauthorized Settlement

A. Problem

Unauthorized settlement occurs when the practitioner accepts, rejects, or represents settlement authority without client approval.

B. Common Exam Patterns

- Practitioner accepts IRS offer while client is unavailable;
- Practitioner signs decision document without client approval;
- Practitioner tells IRS counsel client approved settlement when client did not;
- Practitioner settles to avoid trial preparation;
- Practitioner settles because fee has not been paid;
- Practitioner follows spouse’s instruction without other spouse’s consent;
- Practitioner follows promoter/third-party payer instruction.

C. Example

Facts

IRS offers to settle a deficiency case for \$18,000. Client previously told Practitioner, “See what you can work out.” Practitioner accepts the offer without contacting Client.

Answer

Improper. “See what you can work out” authorizes negotiation, not final acceptance. Settlement is the client’s decision.

X. Settlement with Multiple Clients

A. Joint Representation Risk

Settlement authority becomes more complicated when the practitioner represents:

- Husband and wife;
 - Corporation and shareholder;
 - Partnership and partners;
 - Multiple investors;
 - Fiduciary and beneficiary;
 - Taxpayer and responsible officer;
 - Related business entities.
-

B. Separate Client Consent

Each client must make their own settlement decision.

A practitioner should not assume one client can settle for another unless there is valid legal authority and ethical consent.

C. Multiple-Client Settlement Table

Scenario	Ethics Issue
Husband wants settlement; Wife wants trial	Practitioner may have conflict; cannot accept for both.
Corporation agrees; shareholder objects	Entity and owner are separate clients.
Promoter paying fees wants global settlement	Payer does not control settlement.
One investor gets better terms than others	Aggregate settlement and conflict concern.
One spouse seeks innocent spouse relief	Direct adversity may require separate counsel.
One partner wants to blame another	Conflict and communication issue.

XI. Communication with Represented Persons

A. Core Rule

A practitioner may not communicate about the subject of the representation with a person the practitioner knows is represented by another lawyer in the matter, unless:

- The other lawyer consents;
- The communication is authorized by law;
- The communication is authorized by court order.

B. Rule Applies Even If the Represented Person Initiates Contact

If a represented person contacts the practitioner directly about the matter, the practitioner should stop the communication and redirect the person to their counsel.

C. Represented-Person Contact Table

Situation	May Practitioner Communicate Directly?	Reason
IRS counsel wants to call taxpayer represented by counsel	No, unless taxpayer's counsel consents or law/court order allows	Taxpayer is represented.
Taxpayer represented by counsel emails IRS counsel directly	IRS counsel should not discuss merits without counsel consent	Represented person initiated contact, but rule still applies.
Practitioner wants to interview represented spouse about same matter	No, unless counsel consents	Subject of representation.
Practitioner communicates with represented person about unrelated issue	Maybe	Rule applies to subject of representation.
Court orders direct communication	Yes	Court order exception.
Counsel gives permission for limited contact	Yes, within permission	Consent exception.

XII. Communication with Unrepresented Persons

A. Core Rule

When dealing with an unrepresented person, the practitioner must not state or imply that the practitioner is disinterested.

If the practitioner knows or reasonably should know that the unrepresented person misunderstands the practitioner's role, the practitioner must make reasonable efforts to correct the misunderstanding.

B. Advice to Unrepresented Person

A practitioner representing a client should generally not give legal advice to an unrepresented opposing person, except advice to secure counsel.

C. Unrepresented Person Table

Situation	Proper Conduct
Unrepresented taxpayer asks IRS counsel, "Are you here to help me?"	IRS counsel should clarify that they represent the Commissioner, not the taxpayer.
Unrepresented spouse asks practitioner for legal strategy	Practitioner should not give legal advice other than to seek counsel.
Unrepresented person misunderstands practitioner's role	Correct misunderstanding promptly.
Unrepresented taxpayer wants to discuss settlement	Practitioner may discuss, but must not mislead or imply neutrality.
Practitioner drafts document for unrepresented opposing person	High risk; avoid giving legal advice or misleading person.

XIII. IRS Counsel Contact with Taxpayer

A. Represented Taxpayer

If the taxpayer is represented in the matter, IRS counsel generally should communicate through the taxpayer's counsel unless counsel consents or law/court order authorizes direct contact.

B. Unrepresented Taxpayer

If the taxpayer is not represented, IRS counsel may communicate directly, but must:

- Be truthful;
 - Not imply neutrality;
 - Correct misunderstandings;
 - Avoid giving legal advice other than advising the taxpayer to obtain counsel;
 - Avoid overreaching;
 - Respect Court rules and settlement procedures.
-

C. Limited Appearance Situation

If a practitioner filed a Limited Entry of Appearance and later filed a Notice of Completion, the limited representation has ended. If no other counsel represents the taxpayer, the taxpayer is generally unrepresented for future communications.

D. Example

Facts

Practitioner appears for taxpayer only at calendar call under a Limited Entry of Appearance. After the calendar call, Practitioner files a Notice of Completion. IRS counsel later contacts taxpayer directly about settlement.

Answer

If no other counsel represents taxpayer, direct contact is generally permitted because the limited appearance ended. IRS counsel must still comply with rules for dealing with unrepresented persons.

XIV. Contact During Limited Representation

A. Why Scope Matters

A limited appearance creates an attorney-client relationship for the limited task. During the active limited appearance, opposing counsel must respect the representation.

B. Limited Appearance Contact Table

Status	Contact Rule
General appearance active	Opposing counsel should communicate through counsel.
Limited appearance active for relevant task	Opposing counsel should not bypass counsel on that task.
Limited appearance completed by Notice of Completion	Taxpayer may be unrepresented if no other counsel appears.
Practitioner gave informal advice but did not appear	Analyze whether representation exists; be careful.
Special recognition by Court	Contact should respect Court's recognition and scope.

XV. Communication with Organizations and Entities

A. Entity Representation

When a practitioner represents an organization, the client is the organization, not automatically every officer, shareholder, employee, partner, or member.

B. Contact with Represented Organization

Communication rules may restrict contact with certain organizational constituents when the organization is represented.

High-risk contacts include persons who:

- Supervise or direct the organization's lawyer;
- Have authority to bind the organization;
- Are responsible for the conduct at issue;
- Can make admissions for the organization;
- Are current managerial employees involved in the matter.

C. Entity Contact Table

Person	Contact Risk
Corporate president in represented corporate tax case	High
CFO who handled disputed tax reporting	High
Former employee with no authority	Lower, but confidentiality and privilege issues remain
Current bookkeeper involved in disputed records	Moderate to high
Outside return preparer separately represented	Contact through preparer's counsel
Shareholder individually represented	Contact through shareholder's counsel

XVI. Communication with Government Employees

A. Government Contact Rule

Communication with government agencies may involve special authorization by law, but practitioners must still avoid improper contact, false statements, and represented-person violations.

B. IRS Counsel and IRS Employees

In a docketed Tax Court case:

- IRS counsel represents the Commissioner;
- Practitioner should usually communicate litigation matters through IRS counsel;
- Direct contact with IRS employees may be restricted by procedure, representation status, privilege, or court rules;
- Practitioner must not mislead IRS personnel.

XVII. Confidentiality in Client Communication

A. Practitioner Must Protect Client Information

Client communication duties do not eliminate confidentiality duties.

The practitioner must protect:

- Tax return information;
- Financial records;
- Settlement strategy;
- Penalty-defense facts;
- Confidential client admissions;
- Spousal or joint-client communications;
- Business records;
- Third-party payer information;
- Litigation strategy.

B. Confidentiality Table

Communication Situation	Confidentiality Issue
Client asks practitioner to send records to IRS	Need client authorization and review.
Third-party payer asks for case update	Do not disclose confidential information without client consent.
Spouse asks about joint case	Determine whether spouse is a client and whether joint-client rules apply.
Former client asks about current client's case	Do not disclose.
Practitioner discusses case in public hallway	Risk of confidentiality breach.
Client authorizes disclosure to expert	Disclosure may be proper within authorization.

XVIII. Third-Party Payers and Communication

A. Rule

A third-party payer does not become the client merely by paying the fee.

The practitioner must:

- Communicate with the actual client;
 - Protect client confidentiality;
 - Prevent payer interference;
 - Obtain client consent before sharing information with payer;
 - Confirm that client controls settlement.
-

B. Example

Facts

Taxpayer's father pays the legal fee and asks Practitioner for all settlement communications. Taxpayer has not consented.

Answer

Practitioner may not disclose confidential settlement communications to father without Taxpayer's informed consent. Father pays, but Taxpayer is the client.

XIX. Communication Failures That Create Ethics Problems

A. Common Failures

- Failing to respond to client requests;
 - Failing to send Court orders to client;
 - Failing to communicate IRS settlement offer;
 - Failing to explain trial risks;
 - Failing to confirm settlement authority;
 - Failing to explain limited scope;
 - Failing to warn client about false evidence;
 - Failing to explain conflict risks;
 - Failing to notify client before withdrawal;
 - Failing to give client enough information to make informed decisions.
-

B. Communication Failure Table

Failure	Related Ethics Rule
No response to client for weeks	Communication and diligence
Settlement offer not communicated	Communication and client authority
Client not told trial date	Communication and diligence
Client not told of conflict	Communication and conflict rules
Client not told scope is limited	Communication and limited-scope consent
Client not told practitioner withdrew	Communication and withdrawal
Client not told about adverse ruling	Communication and informed decision-making

XX. Contact Rules and Candor

A. Truthfulness Applies to All Communications

The practitioner must not knowingly make false material statements to:

- Tax Court;
 - IRS counsel;
 - Unrepresented taxpayer;
 - Opposing counsel;
 - Witnesses;
 - Third-party payers;
 - Experts;
 - Court personnel.
-

B. Examples

Statement	Ethical Problem
"My client approved settlement," when client did not	False material statement.
"All documents have been produced," when they have not	False statement and discovery issue.
"I am neutral," said to unrepresented opposing taxpayer	Misleading role statement.
"Your lawyer said this was fine," when counsel did not	False statement.
"The Court requires you to sign this," when it does not	Misleading unrepresented person.

XXI. Exam Examples

Example 1 — Failure to Communicate Settlement Offer

Facts

IRS offers to settle for no penalties and a reduced deficiency. Practitioner thinks the offer is too high and rejects it without telling Client.

Answer

Improper. Settlement belongs to Client. Practitioner must communicate the offer and allow Client to decide after explanation.

Example 2 — Unauthorized Acceptance

Facts

Client says, "Negotiate with IRS and see what they offer." IRS offers \$12,000. Practitioner accepts because it is a good deal.

Answer

Improper. The client authorized negotiation, not final acceptance.

Example 3 — Specific Authority

Facts

Client says, “If IRS offers total liability of \$10,000 or less with no penalty, accept it.” IRS offers exactly \$10,000 and no penalty.

Answer

Practitioner may accept because the client gave specific actual authority.

Example 4 — Represented Taxpayer Contact

Facts

IRS counsel knows Taxpayer is represented by Practitioner in the docketed case. IRS counsel calls Taxpayer directly to discuss settlement.

Answer

Improper unless Practitioner consented, or law or court order authorized direct communication.

Example 5 — Represented Person Initiates Contact

Facts

Represented Taxpayer emails IRS counsel directly and says, “Do not tell my lawyer. I want to settle.”

Answer

IRS counsel should not discuss the matter directly. The represented person’s initiation does not remove the no-contact rule.

Example 6 — Unrepresented Taxpayer

Facts

Unrepresented Taxpayer asks IRS counsel, “Are you my advisor in this case?”

Answer

IRS counsel must correct the misunderstanding and explain that IRS counsel represents the Commissioner, not Taxpayer.

Example 7 — Limited Appearance Completed

Facts

Practitioner files a Limited Entry of Appearance for calendar call and later files a Notice of Completion. IRS counsel contacts Taxpayer directly after that.

Answer

If no other counsel represents Taxpayer, direct contact is generally permitted because the limited appearance ended. IRS counsel must treat Taxpayer as unrepresented and avoid misleading statements.

Example 8 — Third-Party Payer

Facts

A promoter pays Practitioner to represent Taxpayer and tells Practitioner to reject any settlement that suggests the transaction was improper.

Answer

Improper interference. Taxpayer is the client and controls settlement. Practitioner must preserve independent judgment and confidentiality.

Example 9 — Joint Clients Disagree

Facts

Husband and Wife are both clients. IRS offers a settlement. Husband wants to accept; Wife wants trial.

Answer

Practitioner cannot accept settlement for both. The disagreement may create a conflict requiring separate counsel or withdrawal.

Example 10 — False Settlement Authority

Facts

Practitioner tells IRS counsel that Client approved settlement, even though Client rejected it.

Answer

Improper. This is a false statement, violates client authority, and may violate candor/truthfulness duties.

XXII. High-Yield Tables

A. Communication Checklist

Question	Exam Answer
Did the practitioner tell client about the Court order?	Must keep client informed.
Did the practitioner explain consequences?	Must explain enough for informed decision.
Did client approve settlement?	Client controls settlement.
Did practitioner respond to client requests?	Must respond to reasonable requests.
Did practitioner communicate conflicts?	Informed consent may be required.
Did practitioner explain limited scope?	Limited representation requires informed consent.
Did practitioner protect confidentiality?	Communication must not breach Rule 1.6.

B. Settlement Checklist

Question	Required Analysis
Was there an offer?	Practitioner must communicate it.
Was the offer material?	Explain consequences and risks.
Did client authorize acceptance?	Need client decision.
Was authority specific or vague?	Vague authority is usually insufficient.
Were multiple clients involved?	Each client must consent.
Was a third-party payer involved?	Payer does not control settlement.
Did practitioner misstate authority?	Truthfulness violation.
Did settlement create conflict?	Analyze current-client conflict.

C. Contact Rule Checklist

Person Contacted	Rule
Represented taxpayer	Contact through counsel unless consent/law/court order.
Represented spouse	Contact through spouse's counsel if same matter.
Represented entity officer	High risk; communicate through entity counsel.
Unrepresented taxpayer	Do not imply neutrality; correct misunderstandings.
Former client	Protect confidentiality; check conflict rules.
Third-party payer	Do not disclose client information without consent.
Witness	Avoid false statements or improper influence.
IRS counsel	Be truthful; respect client authority.

XXIII. Red Flag Statements

Statement	Issue
"I settled because it was best for you."	Unauthorized settlement.
"I did not tell you about the offer because it was bad."	Communication violation.
"Your spouse agreed, so I signed for both of you."	Joint-client authority problem.
"Your father pays, so I followed his instructions."	Third-party payer interference.
"The taxpayer called me first, so I discussed settlement."	Represented-person contact problem.
"I am just here to help everyone resolve this."	Misleading unrepresented person.
"I filed Notice of Completion but still control the case."	Limited appearance confusion.
"I told IRS you approved even though you did not."	False statement and settlement authority violation.

XXIV. Student Rule Statements

A. Communication Rule Statement

A Tax Court practitioner must keep the client reasonably informed, promptly communicate important developments, respond to reasonable requests for information, and explain the matter enough for the client to make informed decisions.

B. Settlement Authority Rule Statement

The client, not the practitioner, decides whether to settle. The practitioner may negotiate and recommend settlement, but may not accept or reject a settlement offer without client authorization.

C. Represented-Person Contact Rule Statement

A practitioner may not communicate about the subject of the representation with a person known to be represented by counsel in the matter unless that counsel consents, or the communication is authorized by law or court order.

D. Unrepresented-Person Contact Rule Statement

When dealing with an unrepresented person, a practitioner must not state or imply that the practitioner is disinterested and must correct any misunderstanding about the practitioner's role.

E. Limited Appearance Contact Rule Statement

During an active limited appearance, counsel status must be respected within the scope of that appearance. After a Notice of Completion is filed and no other counsel appears, the taxpayer may be treated as unrepresented for future communications.

F. Third-Party Payer Rule Statement

A third-party payer does not control the representation. The client controls objectives, settlement, and confidential information unless the client gives informed consent to limited disclosure.

XXV. Exam Attack Outline

When answering a USTCP communication, settlement, or contact-rule question:

1. Identify the client.
 2. Identify the person communicating.
 3. Determine whether the client is represented, unrepresented, generally represented, or limited-scope represented.
 4. Determine whether the communication concerns the subject of representation.
 5. If settlement is involved, ask whether the client approved it.
 6. If multiple clients are involved, ask whether each client consented.
 7. If a third-party payer is involved, confirm payer did not control the case.
 8. Determine whether the practitioner kept the client reasonably informed.
 9. Determine whether the practitioner explained risks and consequences.
 10. Check whether confidentiality was protected.
 11. Check whether any statement was false or misleading.
 12. Apply Rule 4.2 for represented persons.
 13. Apply Rule 4.3 for unrepresented persons.
 14. Conclude whether the conduct was proper, improper, or required further consent.
-

XXVI. Bottom-Line Rule

For USTCP exam purposes, communication and settlement questions turn on authority, information, and representation status. The practitioner must keep the client informed, explain material developments, promptly communicate settlement offers, and obtain client approval before settlement. Opposing counsel may not bypass known counsel on the matter, even if the represented person initiates contact. If the person is unrepresented, the practitioner may communicate but must be truthful, must not imply neutrality, and must correct any misunderstanding about the practitioner's role.

Meritorious Claims, Adverse Authority, and Tax Court Candor

I. Course Purpose

This module teaches students how to analyze whether a Tax Court practitioner may ethically file, defend, or argue a claim when the facts or law are weak, unfavorable, unsettled, or directly contrary to the client's position.

This subtopic focuses on:

- Meritorious claims and defenses;
 - Frivolous and groundless positions;
 - Reasonable factual inquiry before filing;
 - Good-faith arguments for changing existing law;
 - Adverse legal authority;
 - False or misleading legal argument;
 - Tax Court pleading duties;
 - Sanctions and penalties for improper positions;
 - Candor in petitions, motions, stipulations, briefs, and oral argument.
-

II. Core Exam Rule

A Tax Court practitioner may advocate forcefully for the client, but every claim, defense, petition allegation, motion, and legal argument must have a nonfrivolous basis in fact and law. The practitioner may argue for extension, modification, or reversal of existing law, but may not mislead the Court, hide controlling adverse authority, file claims for delay, or assert positions known to be false, frivolous, or groundless.

III. Governing Rules

A. Main Rules Tested

Authority	Main Point
Tax Court Rule 201	Tax Court practitioners must follow the letter and spirit of the ABA Model Rules.
Tax Court Rule 33	A signed pleading certifies reasonable inquiry, factual support, legal support, nonfrivolous argument, proper purpose, and authority to represent the party.
Tax Court Rule 34	Petitions must clearly identify the errors alleged and facts supporting those errors.
ABA Model Rule 3.1	A lawyer must not assert or defend a claim unless there is a nonfrivolous basis in law and fact.
ABA Model Rule 3.3	A lawyer must not knowingly make false statements of fact or law, fail to correct false statements, hide controlling adverse authority, or offer false evidence.
ABA Model Rule 3.4	A lawyer must not obstruct evidence, falsify evidence, or assist false testimony.
ABA Model Rule 4.1	A lawyer must be truthful in statements to third persons, including IRS counsel.
IRC § 6673	Tax Court may impose penalties for frivolous, groundless, delay-based, or vexatious conduct.

IV. Meritorious Claims and Contentions

A. Basic Rule

A practitioner may bring or defend a Tax Court case, or assert an issue, only if there is a basis in law and fact that is not frivolous.

A claim may be proper when it is supported by:

- Existing statute;
 - Treasury regulation;
 - Tax Court precedent;
 - Controlling Court of Appeals precedent;
 - Supreme Court precedent;
 - Credible factual evidence;
 - Reasonable legal interpretation;
 - Good-faith argument to extend, modify, reverse, or establish law.
-

B. What Is a Meritorious Claim?

A meritorious claim does not mean the client must be likely to win.

It means the claim has a legitimate factual and legal basis.

Examples of Meritorious Claims

- Taxpayer has records supporting a business expense deduction.
 - Taxpayer disputes IRS income reconstruction with credible bank records.
 - Taxpayer raises reasonable cause defense to penalties based on professional reliance.
 - Taxpayer argues that existing Tax Court precedent should be limited based on a later Supreme Court case.
 - Taxpayer challenges IRS burden of proof where the Commissioner asserts fraud.
 - Taxpayer disputes jurisdiction based on the date and validity of the notice.
-

C. Weak Claim vs. Frivolous Claim

Type of Claim	Description	Ethical Result
Strong claim	Supported by facts and controlling law	Proper
Weak but arguable claim	Law or facts are uncertain but plausible	Proper if nonfrivolous
Novel claim	Seeks extension or change in law	Proper if made in good faith
Factually unsupported claim	No evidence after reasonable inquiry	Improper if asserted as fact
Legally foreclosed claim	Clearly barred by controlling authority with no good-faith argument	Improper
Frivolous tax-protester claim	No legitimate legal basis	Improper
Delay-only claim	Filed mainly to postpone assessment or collection	Improper

V. Reasonable Inquiry Before Filing

A. Practitioner's Duty

Before signing or filing a Tax Court pleading, the practitioner must make a reasonable inquiry into both:

- The facts; and
- The law.

The practitioner cannot blindly repeat the client's statements if the facts appear unreliable, incomplete, or contradicted by available records.

B. Reasonable Inquiry May Include

- Reviewing the notice of deficiency or determination;
- Confirming petition deadline;
- Reviewing relevant tax returns;
- Reviewing IRS examination report;
- Requesting documents from client;
- Reviewing substantiation records;
- Checking applicable statutes and regulations;
- Checking Tax Court and appellate precedent;
- Determining appellate venue;
- Confirming client’s authority to file;
- Investigating facts that appear suspicious;
- Asking follow-up questions about inconsistent information.

C. Reasonable Inquiry Table

Situation	Required Inquiry
Client says notice was never received	Review notice, mailing records, address history, and client facts.
Client claims large charitable deduction	Request acknowledgment, appraisal, proof of payment, and contribution documents.
Client denies unreported income	Review bank records, Forms 1099, business records, and IRS transcript.
Client claims business mileage	Review mileage log, calendar, business purpose, and vehicle use.
Client wants penalty abatement	Review reasonable cause facts, reliance evidence, and disclosure history.
Client asserts “wages are not income”	Explain frivolous nature; do not assert as legal claim.
Client wants to file only to delay IRS collection	Refuse improper-purpose filing.

VI. Tax Court Rule 33 Signing Duties

A. Meaning of Signature

When a practitioner signs a pleading, the practitioner certifies that:

- The pleading has been read;
- The factual contentions have support after reasonable inquiry;
- The legal contentions are supported by existing law or nonfrivolous legal argument;
- The filing is not for harassment, delay, or unnecessary cost;
- Counsel is authorized to represent the party.

B. Rule 33 Exam Traps

Fact Pattern	Problem
Practitioner signs petition without reading it	Violates signing duty.
Practitioner files petition with no factual investigation	Reasonable inquiry problem.
Petition alleges every IRS adjustment is wrong but client has no facts	Unsupported pleading problem.
Petition asserts legally frivolous tax-protester claims	Meritorious claim problem.
Petition filed only to buy time before collection	Improper purpose.
Practitioner signs for taxpayer without authority	Representation authority problem.

VII. Tax Court Petition Candor

A. Petition Must Clearly State Errors

A petition should identify:

- Each alleged IRS error;
- Facts supporting each alleged error;
- Relief requested;
- Relevant tax years or periods;
- The notice or determination being challenged.

A petition should not make vague, false, or unsupported allegations.

B. Petition Examples

Proper Petition Allegation

“The Commissioner erred in disallowing petitioner’s Schedule C vehicle expenses because petitioner used the vehicle for documented business travel and maintained mileage records.”

Improper Petition Allegation

“The IRS is wrong about everything and has no authority to tax me.”

Proper Legal Challenge

“The penalty should not apply because petitioner had reasonable cause and acted in good faith based on professional advice.”

Improper Legal Challenge

“The Sixteenth Amendment was never validly ratified, so petitioner owes no income tax.”

VIII. Frivolous, Groundless, and Delay-Based Positions

A. Frivolous Position

A position is frivolous when it lacks any reasonable basis in law or fact.

Common frivolous tax positions include:

- Wages are not income;
 - Federal income tax is voluntary;
 - The IRS has no authority to assess tax;
 - Only federal employees owe income tax;
 - Taxpayer is not a “person” under the Internal Revenue Code;
 - Filing a return violates the Fifth Amendment in all circumstances;
 - The Sixteenth Amendment is invalid;
 - Tax Court has no authority because taxpayer rejects federal jurisdiction.
-

B. Groundless Position

A position is groundless when it has no factual basis.

Examples:

- Claiming charitable deductions with no donation;
 - Claiming business expenses for a nonexistent business;
 - Denying receipt of income shown in taxpayer’s own records;
 - Claiming dependents who do not exist;
 - Claiming theft loss with no theft;
 - Alleging IRS never issued a notice when notice is attached and address is correct.
-

C. Delay-Based Position

A position is delay-based when the proceeding is filed or maintained mainly to postpone tax consequences rather than resolve a legitimate dispute.

Examples:

- Filing a petition only to stop assessment temporarily;
- Refusing to stipulate obvious facts to slow the case;
- Filing repetitive meritless motions;
- Maintaining claims after the Court warns they are frivolous;
- Using discovery to harass or delay rather than obtain relevant evidence.

D. Table: Frivolous vs. Groundless vs. Delay

Position Type	Main Problem	Example
Frivolous	No legal basis	“Wages are not taxable income.”
Groundless	No factual basis	“I paid \$50,000 to charity,” but no donation occurred.
Delay-based	Improper purpose	Filing only to stop collection with no real dispute.
Weak but proper	Low chance of winning but arguable	Ambiguous statute, mixed case law, credible facts.
Novel but proper	Good-faith legal development	Asking Court to apply a new Supreme Court reasoning to tax issue.

IX. Good-Faith Arguments for Changing Law

A. Rule

A practitioner may argue for:

- Extension of existing law;
- Modification of existing law;
- Reversal of existing law;
- Establishment of new law.

But the argument must be good faith and nonfrivolous.

B. Proper Good-Faith Argument

A proper good-faith argument should:

- Acknowledge existing law;
 - Identify why the law should change;
 - Rely on statutes, precedent, policy, or later authority;
 - Avoid misrepresenting current law;
 - Preserve the issue honestly;
 - Explain why the argument is not frivolous.
-

C. Improper “Change the Law” Argument

An improper argument:

- Ignores controlling authority;
 - Misstates the current rule;
 - Repeats rejected tax-protester theories;
 - Uses fake citations;
 - Claims a case says something it does not say;
 - Argues solely to delay the case;
 - Has no legal reasoning beyond client dissatisfaction.
-

D. Good-Faith Argument Table

Argument	Proper?	Reason
“Existing Tax Court precedent controls, but later Supreme Court reasoning supports reconsideration.”	Yes	Honest request for modification.
“This Court should distinguish prior precedent because the facts differ.”	Yes	Proper advocacy.
“The statute is unconstitutional because I do not like paying tax.”	No	Frivolous.
“The IRS lacks authority because taxpayer is a sovereign citizen.”	No	Frivolous.
“The appellate circuit has not ruled; other circuits are split.”	Yes	Nonfrivolous if supported.
“A controlling case rejects us, but it was wrongly decided; here is why.”	Maybe	Proper only if disclosed and argued in good faith.

X. Adverse Authority

A. Core Rule

A practitioner must disclose legal authority when it is:

- Legal authority;
- In the controlling jurisdiction;
- Known to the practitioner;
- Directly adverse to the client’s position;
- Not disclosed by opposing counsel.

The practitioner may still argue that the authority is distinguishable, outdated, wrongly decided, or should not apply.

B. What Counts as Adverse Authority?

Adverse authority is authority that hurts the client's position.

Examples:

- Supreme Court decision rejecting the client's legal theory;
 - Controlling Court of Appeals decision for the case's appeal venue;
 - Tax Court reviewed opinion directly contrary to the argument;
 - Statute or regulation directly foreclosing the claim;
 - Controlling precedent on penalty, jurisdiction, or burden of proof.
-

C. Controlling Jurisdiction in Tax Court

For USTCP exam purposes, controlling authority may include:

- Supreme Court decisions;
- Internal Revenue Code provisions;
- Treasury regulations;
- Tax Court authority;
- Court of Appeals precedent in the circuit where the case would be appealed.

In Tax Court, the appellate venue matters because the Court generally follows squarely controlling Court of Appeals precedent for the circuit to which appeal would lie.

D. Adverse Authority Table

Authority	Must Disclose?	Why
Supreme Court case directly against client	Yes	Controlling authority.
Court of Appeals case in appeal venue directly against client	Yes	Controlling under appellate venue.
Tax Court reviewed opinion directly on point	Usually yes	Highly authoritative in Tax Court.
Nonprecedential memorandum opinion with similar facts	Maybe, depending on context	Not usually controlling, but must not mislead.
IRS publication	Usually not controlling authority	May be persuasive or administrative guidance, but not controlling law.
Out-of-circuit case	Usually not controlling	May be persuasive, not automatically mandatory disclosure.
Authority already cited by IRS	No separate disclosure duty, but must discuss honestly	Opposing counsel disclosed it.

XI. How to Disclose Adverse Authority

A. Proper Method

A practitioner should:

- Identify the authority accurately;
- State the holding honestly;
- Explain why it is distinguishable, limited, or not controlling;
- Preserve a good-faith argument;
- Avoid overstating the client's chances.

B. Example Disclosure Language

“Although the Commissioner has not cited it, the Court should be aware of controlling appellate authority that rejected a similar argument. Petitioner submits that this case is distinguishable because the prior case involved different statutory language and no evidence of reasonable reliance.”

C. Improper Methods

A practitioner may not:

- Ignore controlling adverse authority;
 - Hide it in a footnote without explanation;
 - Misquote the case;
 - Claim the case says the opposite of what it says;
 - Cite an overruled case as valid authority;
 - Argue “no authority exists” when controlling authority exists.
-

XII. Tax Court Candor

A. Candor Applies Throughout the Case

Candor applies to:

- Petitions;
 - Answers and replies;
 - Motions;
 - Stipulations;
 - Discovery responses;
 - Status reports;
 - Trial memoranda;
 - Oral argument;
 - Briefs;
 - Proposed findings of fact;
 - Settlement documents filed with the Court.
-

B. Tax Court Candor Table

Filing or Statement	Candor Duty
Petition	Allegations must have factual and legal basis.
Motion	Facts and law must be stated honestly.
Stipulation	Must not stipulate to facts known to be false.
Trial memorandum	Must not misstate evidence or law.
Brief	Must accurately cite record and authority.
Oral argument	Must not mislead Court about facts, law, or procedure.
Status report	Must accurately state case progress and settlement status.
Proposed findings	Must be supported by record evidence.

XIII. False Statements of Law

A. Examples

False statements of law include:

- Claiming no statute authorizes the deficiency when one does;
- Claiming a deadline is extendable when controlling law says it is not;
- Citing an overruled case as current authority;
- Misquoting a regulation;
- Saying the IRS has burden of proof when taxpayer does;
- Claiming the Tax Court has jurisdiction over a matter it clearly cannot hear;
- Saying a case supports the client when it actually rejects the client's argument.

B. Proper Response to Bad Law

If law is unfavorable, the practitioner should:

- Acknowledge the current rule;
 - Preserve the issue;
 - Make a good-faith challenge;
 - Explain uncertainty or circuit split;
 - Distinguish facts;
 - Argue policy where appropriate;
 - Avoid false certainty.
-

XIV. False Statements of Fact

A. Examples

False factual statements include:

- “Taxpayer never received income,” when records show income received;
 - “The petition was mailed on time,” when practitioner knows it was not;
 - “The IRS never sent a notice,” when notice exists;
 - “All documents were produced,” when documents were withheld;
 - “Client approved settlement,” when client rejected it;
 - “The taxpayer relied on the preparer,” when taxpayer admits no reliance.
-

B. Exam Point

A practitioner may challenge the IRS’s proof, but may not affirmatively state a fact the practitioner knows is false.

XV. Misleading Use of Authority

A. Improper Citation Practices

A practitioner must not:

- Cite a case for a proposition it does not support;
 - Omit key limiting language;
 - Quote selectively in a misleading way;
 - Treat dicta as holding without explanation;
 - Ignore later reversal or statutory change;
 - Rely on outdated law without checking current validity;
 - Claim authority is controlling when it is only persuasive.
-

B. Proper Citation Practices

A practitioner should:

- Check whether authority is still good law;
 - Identify controlling vs. persuasive authority;
 - Explain contrary authority honestly;
 - Use parentheticals accurately;
 - Cite statutes and regulations correctly;
 - Avoid exaggerating holdings.
-

XVI. Sanctions, Penalties, and Discipline

A. Tax Court Consequences

Improper claims or arguments may lead to:

- Striking pleadings;
 - Monetary sanctions;
 - Expenses and attorney's fees;
 - Penalty under IRC § 6673;
 - Counsel's personal liability for vexatious conduct;
 - Disciplinary referral;
 - Damage to credibility before the Court;
 - Withdrawal or disqualification issues.
-

B. Sanctions Table

Conduct	Possible Consequence
Filing petition without factual basis	Rule 33 sanctions
Filing to delay collection	IRC § 6673 penalty
Asserting frivolous tax-protester arguments	IRC § 6673 penalty
Multiplying proceedings unreasonably	Personal cost liability for practitioner
Misstating controlling law	Candor violation and discipline
Hiding adverse authority	Candor violation
Maintaining groundless claim after warning	Sanctions or penalty
Filing repetitive meritless motions	Sanctions and credibility damage

XVII. Meritorious Claim Examples

Example 1 — Weak but Proper Deduction Claim

Facts

Taxpayer lacks perfect records but has bank statements, calendar entries, and partial receipts supporting business expenses.

Analysis

The claim may be weak but not frivolous if there is a factual basis and a good-faith argument for substantiation.

Example 2 — Frivolous Wage Argument

Facts

Taxpayer instructs Practitioner to argue that wages are not income.

Analysis

Practitioner must refuse to assert this position because it is frivolous.

Example 3 — Adverse Circuit Authority

Facts

A controlling Court of Appeals case for the taxpayer's venue rejects the exact legal theory. IRS counsel does not cite the case.

Analysis

Practitioner must disclose the adverse authority and may then argue that it should be distinguished, limited, or reconsidered.

Example 4 — Petition Filed Only for Delay

Facts

Client admits there is no dispute but wants to file a petition to delay IRS collection.

Analysis

Practitioner must not file a petition for improper purpose.

Example 5 — Novel Legal Argument

Facts

No controlling authority addresses a new statutory amendment. Practitioner argues by analogy to related provisions.

Analysis

This is proper if the argument is made in good faith and supported by reasonable legal analysis.

Example 6 — Misleading Citation

Facts

Practitioner cites a case as allowing a deduction, but the case actually denied the deduction on the same facts.

Analysis

Improper. Practitioner must accurately represent authority.

XVIII. High-Yield Tables

A. Meritorious Claim Checklist

Question	Exam Answer
Is there factual support?	Required after reasonable inquiry.
Is there legal support?	Existing law or nonfrivolous argument required.
Is the claim filed for proper purpose?	Must not be for delay, harassment, or needless cost.
Has practitioner checked controlling law?	Required for competent and candid advocacy.
Is adverse authority disclosed if required?	Must disclose controlling, directly adverse, undisclosed authority.
Is the client asking for a frivolous argument?	Practitioner must refuse.
Is the argument novel but good faith?	May be proper.
Is the pleading signed?	Signature certifies compliance.

B. Adverse Authority Checklist

Question	If Yes
Is the authority legal authority?	Continue analysis.
Is it in the controlling jurisdiction?	Disclosure may be required.
Is it directly adverse?	Disclosure required if not disclosed by IRS.
Does practitioner know about it?	Duty applies to known authority.
Has IRS counsel already disclosed it?	No separate disclosure duty, but do not mislead.
Can it be distinguished?	Disclose and distinguish.
Is it merely persuasive?	Disclosure may not be mandatory, but candor still applies.

C. Proper vs. Improper Advocacy

Proper Advocacy	Improper Advocacy
Challenge IRS proof	Assert facts known to be false
Argue law should be extended	Pretend adverse law does not exist
Distinguish bad precedent	Misquote bad precedent
Preserve issue for appeal	File frivolous protester claims
Contest penalties with evidence	Create false reliance story
Make alternative arguments	Use inconsistent false facts
Seek continuance for real need	File motions only for delay

XIX. Red Flag Statements

Statement	Ethics Issue
“File anyway so I can delay collection.”	Improper purpose.
“Argue wages are not income.”	Frivolous legal position.
“Do not cite that case; it hurts us.”	Adverse authority problem.
“Just say the records exist.”	False factual statement.
“The IRS will have to prove everything even if we know it is true.”	May be improper if used to mislead or delay.
“No court has ever rejected this,” when many have	False legal statement.
“Use this overruled case; do not mention reversal.”	Misleading authority.
“Plead every error even if unsupported.”	Rule 33 problem.

XX. Student Rule Statements

A. Meritorious Claim Rule Statement

A Tax Court practitioner may not bring, defend, assert, or controvert an issue unless there is a nonfrivolous basis in fact and law, including a good-faith argument for changing existing law.

B. Rule 33 Signing Rule Statement

By signing a Tax Court pleading, the practitioner certifies that the pleading was read, reasonably investigated, factually grounded, legally warranted or nonfrivolous, not filed for improper purpose, and authorized by the client.

C. Adverse Authority Rule Statement

A practitioner must disclose known legal authority in the controlling jurisdiction that is directly adverse to the client’s position if opposing counsel has not disclosed it.

D. Candor Rule Statement

A practitioner must not knowingly make a false statement of fact or law to the Tax Court, fail to correct a false material statement, offer known false evidence, or mislead the Court through inaccurate authority or argument.

E. Frivolous Position Rule Statement

A frivolous position is one that lacks any reasonable basis in law or fact. A practitioner must refuse to assert frivolous tax-protester arguments or maintain groundless claims for delay.

F. Good-Faith Legal Change Rule Statement

A practitioner may argue for extension, modification, reversal, or establishment of law if the argument is made honestly, supported by legal reasoning, and not used to mislead or delay.

XXI. Exam Attack Outline

When answering a USTCP question on meritorious claims, adverse authority, or candor:

1. Identify the claim, defense, filing, or argument.
 2. Determine whether it has factual support.
 3. Determine whether it has legal support.
 4. Ask whether the practitioner made a reasonable inquiry.
 5. Determine whether the argument is existing law, good-faith law change, or frivolous.
 6. Check whether the filing was made for delay, harassment, or needless cost.
 7. Identify any controlling adverse authority.
 8. Determine whether opposing counsel disclosed the adverse authority.
 9. If not disclosed, state that practitioner must disclose it.
 10. Determine whether any statement of fact or law is false or misleading.
 11. Apply Tax Court candor duties to the petition, motion, stipulation, brief, or argument.
 12. Discuss possible sanctions, IRC § 6673 penalties, discipline, or withdrawal.
 13. Conclude whether the practitioner may proceed, must revise, must disclose, or must refuse.
-

XXII. Bottom-Line Rule

For USTCP exam purposes, the practitioner's role is not to repeat every client theory. The practitioner must screen claims for factual support, legal support, proper purpose, and candor. A weak or novel claim may be proper if it is nonfrivolous and honestly presented, but a frivolous, groundless, false, or delay-based claim must be rejected. If controlling adverse authority exists and IRS counsel has not disclosed it, the practitioner must disclose it and then advocate honestly around it.

Withdrawal, Substitution, Discipline, and Integrated Exam Practice

I. Course Purpose

This module teaches students how to analyze end-of-representation issues and disciplinary consequences in U.S. Tax Court practice.

This subtopic focuses on:

- Withdrawal by notice;
 - Withdrawal by motion;
 - Withdrawal requested by the client;
 - Substitution of counsel;
 - Withdrawal after conflicts, nonpayment, false evidence, or client fraud;
 - Duties to protect the client after withdrawal;
 - Tax Court practitioner discipline;
 - Reporting discipline or convictions;
 - Immediate suspension and reinstatement;
 - Integrated ethics exam practice combining all legal ethics topics.
-

II. Core Exam Rule

A Tax Court practitioner who has entered an appearance cannot simply stop representing the client. Withdrawal or substitution must comply with Tax Court Rule 24 and professional responsibility duties. A practitioner may be disciplined by the Tax Court for criminal convictions, discipline by another court, violations of the ABA Model Rules, violations of Tax Court rules or orders, or other conduct unbecoming a member of the Tax Court Bar.

III. Governing Rules

A. Main Rules Tested

Authority	Main Point
Tax Court Rule 24(a)	Explains how counsel enters an appearance.
Tax Court Rule 24(c)	Governs withdrawal of counsel.
Tax Court Rule 24(d)	Governs substitution of counsel.
Tax Court Rule 24(e)	Requires prompt notice of changes in required counsel or party information.
Tax Court Rule 24(g)	Requires withdrawal, informed written consent, or other corrective steps for certain conflicts.
Tax Court Rule 201	Requires Tax Court practitioners to follow the ABA Model Rules and allows the Court to inquire into employment terms.
Tax Court Rule 202	Governs disciplinary matters before the Tax Court.
ABA Model Rule 1.16	Governs declining or terminating representation.
ABA Model Rule 1.3	Requires diligence and promptness.
ABA Model Rule 1.4	Requires client communication.
ABA Model Rule 1.7	Governs current-client conflicts.
ABA Model Rule 1.9	Governs former-client conflicts.
ABA Model Rule 3.3	Requires candor to the tribunal and remedial measures.
ABA Model Rule 8.4	Defines professional misconduct.

IV. Appearance Status Comes First

A. Why Appearance Matters

Before deciding whether withdrawal is needed, determine whether the practitioner is counsel of record.

A practitioner may become counsel of record by:

- Signing and filing the petition;
- Signing and filing another initial pleading or document;
- Filing an entry of appearance;
- Filing a valid substitution of counsel.

B. Exam Point

If a practitioner has entered a general appearance, representation continues until:

- The case ends;
- The Court permits withdrawal;
- A valid substitution of counsel occurs;
- The practitioner is otherwise removed under the rules;
- In limited appearance cases, the limited representation is completed properly.

A practitioner may not end a general appearance merely by sending a letter, email, or text to the client.

V. Withdrawal of Counsel Under Tax Court Rule 24(c)

A. Two Withdrawal Routes

Tax Court Rule 24(c) creates two main routes:

1. **Notice of withdrawal as counsel;** or
2. **Motion to withdraw as counsel.**

The correct route depends on whether the conditions for withdrawal by notice are satisfied.

B. Withdrawal by Notice

Counsel may withdraw by notice only if all three conditions are met:

- More than one counsel entered appearances for that party;
 - At least one counsel will continue to serve as counsel for that party;
 - The notice is filed no later than 30 days before the first day of the Court's trial session;
 - There is no objection to the withdrawal.
-

C. Withdrawal by Motion

Counsel must file a motion to withdraw when counsel cannot withdraw by notice.

A motion is required when:

- Counsel is the only counsel of record;
 - Fewer than 30 days remain before the trial session;
 - Someone objects to the withdrawal;
 - The client wants counsel removed but counsel has not filed a notice;
 - A party moves to withdraw counsel;
 - The case involves party substitution or change of fiduciary requiring former counsel to withdraw.
-

D. Withdrawal Table

Situation	Proper Filing	Reason
Two counsel appeared; one remains; no objection; more than 30 days before trial	Notice of withdrawal	Rule 24(c)(1) conditions satisfied.
Only one counsel appeared	Motion to withdraw	No counsel remains.
Trial session begins in 20 days	Motion to withdraw	Notice route unavailable within 30 days.
Client objects to withdrawal	Motion to withdraw	Notice route requires no objection.
Client wants to remove counsel	Motion to withdraw counsel by party	Party seeks withdrawal of counsel.
Counsel wants to withdraw due to conflict	Usually motion to withdraw	Court permission often required.
Counsel entered limited appearance and completed task	Notice of Completion, not ordinary withdrawal	Limited appearance procedure controls.

VI. General Requirements for Withdrawal

A. Required Notice

A notice or motion to withdraw must state that prior notice was provided to:

- Counsel's client or the party's counsel; and
- Each other party or each other party's counsel.

It must also state whether there is any objection.

B. Required Client Contact Information

A motion to withdraw must include the party's then-current:

- Mailing address;
 - Email address, if any;
 - Telephone number.
-

C. Exam Trap

Do not say “counsel may withdraw by notifying the client only.”

In Tax Court, counsel must comply with Rule 24(c). If Court permission is required, counsel remains responsible until the Court allows withdrawal.

VII. Substitution of Counsel Under Tax Court Rule 24(d)

A. Definition

Substitution of counsel allows new counsel to enter an appearance while current counsel's appearance is withdrawn.

B. Timing Rule

No later than 30 days before the first day of the Court's trial session, counsel who has not previously appeared may enter an appearance by filing a substitution of counsel.

If the substitution occurs within 30 days of the trial session, the new counsel must file an entry of appearance, and the withdrawal of current counsel must proceed under the withdrawal rule.

C. Required Contents

A substitution of counsel must state:

- Substituted counsel enters an appearance for the party;
- Current counsel's appearance is withdrawn;
- Current counsel provided prior notice of the substitution to the client and to each other party or their counsel;
- There is no objection to the substitution.

The substitution must be signed by:

- Current counsel; and
- Substituted counsel.

It must include the required counsel information and be filed by substituted counsel.

D. Substitution Table

Situation	Proper Result
New counsel replaces old counsel 45 days before trial; no objection	File substitution of counsel.
New counsel replaces old counsel 10 days before trial	New counsel files entry of appearance; old counsel must withdraw under Rule 24(c).
Current counsel refuses to sign substitution	Motion practice may be needed.
Client hires new counsel but old counsel remains of record	Old counsel must be formally withdrawn or substituted.
Substitution lacks new counsel's Tax Court bar number	Defective appearance information.

VIII. Mandatory Withdrawal

A. When Withdrawal Is Required

A practitioner must withdraw if continued representation would violate the ethics rules or law.

Common mandatory withdrawal situations include:

- Representation would violate the ABA Model Rules;
- Practitioner is not competent and cannot become competent;
- Conflict is nonconsentable;
- Client insists on using practitioner's services to commit or continue fraud;
- Client demands false evidence or false statements;
- Practitioner's physical or mental condition materially impairs representation;
- Practitioner is discharged by the client;
- Practitioner is suspended, disbarred, or placed on an ineligible list;
- Practitioner becomes a necessary witness and cannot continue as trial advocate.

B. Mandatory Withdrawal Table

Trigger	Why Withdrawal May Be Required
Nonconsentable conflict	Loyalty and independent judgment cannot be preserved.
Client insists on perjury	Practitioner cannot assist false evidence.
Client uses practitioner to commit fraud	Continued representation violates ethics rules.
Practitioner suspended from Tax Court practice	Practitioner cannot appear.
Client fires practitioner	Representation must terminate, subject to Court procedure.
Practitioner is materially impaired	Competent representation impossible.
Practitioner becomes necessary witness	Trial-role limit may bar advocacy.

IX. Permissive Withdrawal

A. When Withdrawal May Be Allowed

A practitioner may seek withdrawal when:

- Withdrawal can be accomplished without material adverse effect on the client;
 - Client persists in conduct involving the practitioner's services that practitioner reasonably believes is criminal or fraudulent;
 - Client used practitioner's services to perpetrate crime or fraud;
 - Client insists on action practitioner considers repugnant or fundamentally disagrees with;
 - Client substantially fails to pay or fulfill an obligation after reasonable warning;
 - Representation creates unreasonable financial burden;
 - Client makes representation unreasonably difficult;
 - Other good cause exists.
-

B. Nonpayment of Fees

Nonpayment may justify seeking withdrawal, but it does not permit abandonment.

The practitioner must still:

- Communicate with the client;
 - Give reasonable warning if withdrawal will be sought;
 - Protect deadlines;
 - File a proper motion if required;
 - Continue representation until the Court permits withdrawal if Court approval is required.
-

C. Permissive Withdrawal Table

Situation	May Counsel Seek Withdrawal?	Key Limit
Client fails to pay after warning	Yes	No abandonment; Court approval may be needed.
Client refuses to cooperate	Yes	Must avoid material harm if possible.
Client demands unethical tactic	Yes or must withdraw	Depends on severity.
Client wants weak but nonfrivolous claim	Usually no automatic right	Practitioner can still advocate ethically.
Practitioner dislikes client	Not enough by itself	Need good cause.
Trial is imminent	Difficult	Court may deny withdrawal to prevent prejudice.

X. Duties After Termination

A. Protecting the Client

Upon termination, the practitioner must take reasonable steps to protect the client's interests.

Those steps include:

- Giving reasonable notice;
- Allowing time to obtain other counsel;
- Surrendering papers and property to which the client is entitled;
- Refunding unearned fees or unused expenses;
- Avoiding prejudice to the client;
- Preserving confidentiality;
- Explaining upcoming deadlines;
- Complying with Court orders until withdrawal is effective.

B. Post-Termination Table

Duty	Example
Reasonable notice	Tell client withdrawal is being sought before filing motion.
Time for new counsel	Do not wait until trial morning absent emergency.
Surrender papers	Provide pleadings, orders, discovery, and records client needs.
Refund unearned fees	Return unused advance fee or expense deposit.
Protect deadlines	Tell client about trial date, status report deadline, or briefing deadline.
Maintain confidentiality	Do not reveal client secrets merely because representation ended.

XI. Withdrawal and Confidentiality

A. Motion to Withdraw Must Avoid Unnecessary Disclosure

When seeking withdrawal, counsel should avoid revealing confidential client information unless disclosure is necessary and permitted.

Appropriate wording may be limited, such as:

- “Professional considerations require withdrawal.”
- “Irreconcilable differences have arisen.”
- “Continued representation is not consistent with counsel’s ethical obligations.”

B. Exam Point

A practitioner should not file a motion that publicly accuses the client of fraud, lying, or nonpayment unless such disclosure is necessary and ethically permitted.

XII. Withdrawal Because of Conflict

A. Common Conflict Triggers

Withdrawal may be required when:

- Practitioner represents spouses whose interests become adverse;
- One client seeks innocent spouse relief against another client;
- Practitioner represented a former client in a substantially related matter;
- Practitioner's own return-preparation role is central;
- Practitioner promoted the transaction at issue;
- Practitioner represents multiple clients with differing settlement interests;
- Practitioner becomes a witness;
- Third-party payer interferes with independent judgment.

B. Conflict Withdrawal Table

Conflict Situation	Proper Response
Consentable conflict	Obtain informed written consent or withdraw.
Nonconsentable conflict	Withdraw or decline representation.
Joint clients become adverse	May need to withdraw from one or both.
Practitioner promoted transaction	Informed written consent, withdrawal, or cure conflict.
Practitioner is necessary witness	Separate trial counsel or withdrawal.
Former-client confidential information is material	Decline or withdraw absent proper consent.

XIII. Withdrawal Because of Candor or Fraud

A. False Evidence Already Before Court

If false material evidence has already been submitted, withdrawal alone may not be enough. The practitioner may need to take remedial measures.

B. Client Fraud Table

Situation	Proper Response
Client plans to lie	Counsel against; refuse false evidence; withdraw if necessary.
Client already lied and refuses correction	Remedial measures may require disclosure.
Client asks counsel to hide documents	Refuse; advise preservation and compliance.
Client used counsel's motion to mislead Court	Correct the record if material.
Client insists on frivolous argument	Refuse argument; withdraw if necessary.

XIV. Withdrawal Near Trial

A. Court Concern

Withdrawal near trial is more difficult because it may:

- Prejudice the client;
 - Delay the case;
 - Waste Court resources;
 - Harm opposing party preparation;
 - Interrupt calendar management.
-

B. Trial-Proximity Table

Timing	Withdrawal Difficulty
Months before trial	Easier if good cause exists.
More than 30 days before trial with other counsel remaining	Notice may be available.
Within 30 days of trial	Motion required; Court scrutiny increases.
Day of trial	Very difficult unless mandatory ethics issue exists.
After trial before briefs	Court may consider briefing deadlines and prejudice.

XV. Practitioner Discipline Under Tax Court Rule 202

A. Grounds for Discipline

A member of the Tax Court Bar may be disciplined for:

- Conviction of a felony;
 - Conviction of a lesser crime involving false swearing, misrepresentation, fraud, criminal violation of the Internal Revenue Code, bribery, extortion, misappropriation, theft, or moral turpitude;
 - Discipline by another court;
 - Disbarment or suspension by consent or resignation while misconduct investigation is pending;
 - Conduct before the Tax Court that violates the ABA Model Rules, Tax Court Rules, Court orders, or Court instructions;
 - Any other conduct unbecoming a member of the Tax Court Bar.
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B. Discipline Table

Conduct	Possible Discipline Issue
Felony conviction	Rule 202 discipline.
Fraud-related misdemeanor	Rule 202 discipline.
State bar suspension	Must report; reciprocal discipline issue.
Disobeying Tax Court order	Rule violation and discipline risk.
Lying to the Court	Candor violation and conduct unbecoming.
Filing frivolous petitions repeatedly	Rule violation and possible sanctions/discipline.
Misappropriating client funds	Discipline and possible criminal issue.
Failing to report discipline	Separate discipline problem.

XVI. Reporting Convictions and Discipline

A. Reporting Duty

A Tax Court Bar member must report certain convictions, discipline, disbarment, or suspension to the Chair of the Court's Committee on Admissions, Ethics, and Discipline.

The report must be made in writing no later than 30 days after the judgment of conviction or order of discipline.

B. Reporting Table

Event	Report Required?
Felony conviction	Yes.
Crime involving fraud or false swearing	Yes.
State court discipline	Yes.
Federal court suspension	Yes.
Disbarment by consent during misconduct investigation	Yes.
Suspension by IRS Office of Professional Responsibility	Yes if agency exercises professional disciplinary jurisdiction.
Mere client complaint with no discipline yet	Not necessarily under reporting rule, but may become relevant.

XVII. Possible Disciplinary Actions

A. Sanctions Available

Discipline may include:

- Disbarment from practice before the Tax Court;
- Suspension from practice before the Tax Court;
- Reprimand;
- Admonition;
- Any other sanction the Court deems appropriate;
- Immediate suspension until further order in appropriate cases.

B. Immediate Suspension

The Court may immediately suspend a practitioner in certain circumstances.

A Judge may immediately suspend a person for not more than 60 days for contempt or misconduct during a trial or hearing.

C. Opportunity to Be Heard

Except for specific interim suspension procedures, a practitioner generally may not be suspended for more than 60 days or disbarred without an opportunity to be heard.

XVIII. Disciplinary Proceedings and Reinstatement

A. Disciplinary Proceedings

When a disciplinary event or allegation occurs, the Court may issue an order to show cause why the practitioner should not be disciplined or take other appropriate action.

The order may require:

- Written response;
 - Hearing before one or more Judges;
 - Hearing before a panel of three Judges if based on a complaint by a Judge of the Court.
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B. Reinstatement

A practitioner suspended for 60 days or less is automatically reinstated at the end of the suspension.

A practitioner suspended for more than 60 days or disbarred may not resume practice until reinstated by Court order.

To be reinstated, the practitioner must demonstrate by clear and convincing evidence that reinstatement will not harm:

- The integrity and standing of the Tax Court Bar;
 - The administration of justice;
 - The public interest.
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XIX. Discipline vs. Case Sanctions

A. Difference

Discipline concerns the practitioner's professional status before the Tax Court.

Case sanctions concern misconduct in a particular case.

B. Comparison Table

Issue	Discipline	Case Sanction
Purpose	Protect Court and public from unfit practice	Control litigation and remedy case misconduct
Rule	Rule 202	Tax Court rules, orders, IRC sanctions
Target	Practitioner	Party, practitioner, or both
Examples	Suspension, disbarment, reprimand	Costs, penalties, struck filings
Trigger	Professional misconduct	Case-specific misconduct
Result	Affects ability to practice	Affects case outcome or costs

XX. Integrated Ethics Exam Method

A. Global Ethics Checklist

For mixed USTCP ethics questions, use this order:

1. Identify all clients.
2. Identify counsel status: admitted, in good standing, general appearance, limited appearance, or no appearance.
3. Identify the practitioner's role: counsel, preparer, advisor, promoter, witness, fee recipient, or former counsel.
4. Identify the client's objective.
5. Identify whether the conduct is lawful and ethical.
6. Check competence and diligence.
7. Check communication and settlement authority.
8. Check current-client conflicts.
9. Check former-client and imputed conflicts.
10. Check whether practitioner is a necessary witness.
11. Check candor, false evidence, and client fraud.
12. Check meritorious claim and adverse authority issues.
13. Check fee and third-party payer issues.
14. Check contact rules for represented or unrepresented persons.
15. Decide whether informed written consent can cure the issue.
16. Decide whether withdrawal, substitution, remedial measures, or discipline is implicated.
17. State the final result clearly.

B. Integrated Issue Spotting Table

Fact Pattern Clue	Ethics Issue
“Client stopped paying”	Permissive withdrawal, no abandonment.
“Client fired counsel”	Mandatory termination, subject to Court permission.
“Trial is next week”	Withdrawal becomes harder.
“Only counsel of record”	Motion to withdraw required.
“Another counsel will remain”	Notice may be possible if timing and no objection satisfied.
“New counsel replaces old counsel”	Substitution rules.
“Client wants to lie”	Candor, false evidence, withdrawal/remedial measures.
“Practitioner prepared return”	Witness and personal-interest conflict.
“Spouses disagree”	Current-client conflict.
“Former client is now adverse”	Former-client conflict.
“Promoter pays fees”	Third-party payer and conflict.
“Practitioner disciplined by state bar”	Reporting and Rule 202 discipline.
“Practitioner ignores Court order”	Diligence, candor, Rule 202 discipline.

XXI. Integrated Practice Scenario 1 — Nonpayment Before Trial

Facts

Practitioner entered a general appearance for Taxpayer. Trial is three weeks away. Taxpayer has not paid the final bill despite repeated reminders. Practitioner sends a text: “I am done,” stops preparing, and does not file anything with the Court.

Issues

- General appearance remains active.
- Trial is within 30 days.
- Practitioner is the only counsel.
- Nonpayment may support withdrawal, but not abandonment.
- Motion to withdraw is required.
- Practitioner must protect client interests until the Court permits withdrawal.

Exam Answer

Practitioner acted improperly. Nonpayment may justify seeking withdrawal after reasonable warning, but counsel cannot simply quit by text. Because counsel is the only counsel of record and trial is close, counsel must file a motion to withdraw, provide required notice, include current client contact information, and continue protecting the client unless and until the Court grants withdrawal.

XXII. Integrated Practice Scenario 2 — Conflict and Withdrawal

Facts

Practitioner represents Husband and Wife in a joint deficiency case. Wife now wants innocent spouse relief and says Husband hid income. Husband denies it and wants Practitioner to defend both spouses.

Issues

- Current-client conflict.
- Direct adversity between spouses.
- Confidentiality problem.
- Informed consent may not cure if practitioner cannot competently and loyally represent both.
- Withdrawal from one or both representations may be required.
- Court withdrawal procedure must be followed.

Exam Answer

Practitioner must stop and analyze the conflict. Wife's claim may be materially adverse to Husband. If the conflict is nonconsentable, Practitioner must withdraw from one or both representations as required and must comply with Rule 24 withdrawal procedures. Practitioner must also protect confidential information and avoid prejudice to either client.

XXIII. Integrated Practice Scenario 3 — False Evidence After Filing

Facts

Practitioner files a motion stating that Taxpayer was hospitalized and could not attend trial. Later, Taxpayer admits he was not hospitalized and only wanted delay. Taxpayer refuses to correct the motion.

Issues

- False material statement to the Court.
- Candor and remedial measures.
- Client fraud.
- Withdrawal alone may not be enough.
- Possible discipline if practitioner fails to correct.

Exam Answer

Practitioner must counsel Taxpayer to correct the false statement. If Taxpayer refuses, Practitioner must take reasonable remedial measures, which may include correcting the record or disclosure to the Court if necessary. Withdrawal may be required, but withdrawal alone does not cure false evidence or a false material statement still before the Court.

XXIV. Integrated Practice Scenario 4 — Substitution Near Trial

Facts

Taxpayer hires New Counsel 10 days before trial. Current Counsel signs a substitution form, and New Counsel files it as a substitution of counsel.

Issues

- Substitution more than 30 days before trial is handled by substitution rule.
- Within 30 days, new counsel must file an entry of appearance.
- Current counsel's withdrawal must proceed under Rule 24(c).
- Court permission may be needed.

Exam Answer

The substitution procedure is not sufficient because trial is within 30 days. New Counsel should file an entry of appearance, and Current Counsel must withdraw under Rule 24(c), usually by motion. Until the Court allows withdrawal, Current Counsel may remain responsible.

XXV. Integrated Practice Scenario 5 — Practitioner Disciplined Elsewhere

Facts

A practitioner admitted to the Tax Court Bar is suspended by a state supreme court for trust-account violations. The practitioner does not notify the Tax Court and continues entering appearances.

Issues

- Discipline by another court.
- Reporting duty within 30 days.
- Tax Court disciplinary jurisdiction.
- Possible suspension, reprimand, or other sanction.
- Possible additional discipline for failure to report.

Exam Answer

The practitioner likely violated Rule 202 by failing to report the discipline in writing within 30 days. The Tax Court may discipline the practitioner based on the state discipline and may impose suspension, reprimand, admonition, disbarment, or another appropriate sanction.

XXVI. Integrated Practice Scenario 6 — Frivolous Claim and Withdrawal

Facts

Taxpayer insists that Practitioner argue wages are not income and threatens to fire Practitioner if the argument is not made. Practitioner knows the position is frivolous.

Issues

- Meritorious claim requirement.
- Frivolous tax argument.
- Client demanding unethical conduct.
- Withdrawal may be required if client insists.
- Practitioner must avoid filing frivolous papers.

Exam Answer

Practitioner must refuse to assert the frivolous position. If Taxpayer insists that the practitioner pursue it as a condition of representation, Practitioner may need to withdraw, subject to Court permission and Rule 24 procedures. Practitioner must not file frivolous claims for delay or client preference.

XXVII. Integrated Practice Scenario 7 — Promoter Fee, Conflict, and Discipline Risk

Facts

Promoter pays Practitioner to represent several investors in a Tax Court case involving Promoter's transaction. Promoter tells Practitioner not to blame the transaction documents. One investor wants to argue that Promoter misled him.

Issues

- Third-party payer issue.
- Current-client conflict among investors.
- Promoter interference with independent judgment.
- Potential former-client or personal-interest conflict.
- Settlement and strategy belong to clients.
- Withdrawal may be required.
- Discipline risk if practitioner follows promoter's instructions over client interests.

Exam Answer

The investors are the clients, not Promoter. Practitioner must protect independent judgment and confidentiality. If investor positions conflict or Promoter's payment materially limits representation, Practitioner must obtain informed consent if the conflict is consentable or withdraw if it is not. Practitioner may not allow Promoter to control litigation strategy.

XXVIII. Integrated Practice Scenario 8 — Practitioner as Witness

Facts

Practitioner prepared the return, advised Taxpayer to claim a deduction, and now represents Taxpayer in Tax Court. IRS asserts penalties. Taxpayer's best defense is reliance on Practitioner's advice.

Issues

- Practitioner as necessary witness.
- Personal-interest conflict.
- Penalty defense depends on Practitioner's advice.
- Withdrawal or separate trial counsel likely required.
- Informed consent may not cure advocate-witness problem.

Exam Answer

Practitioner may have a conflict because the client's best defense depends on Practitioner's own advice. Practitioner is likely a necessary witness. Practitioner should consider withdrawal as trial counsel or use separate trial counsel, while ensuring the client is protected and Rule 24 procedures are followed.

XXIX. High-Yield Final Review Tables

A. Withdrawal Decision Table

Question	If Yes
Has counsel entered a general appearance?	Withdrawal or substitution must follow Rule 24.
Is counsel the only attorney/practitioner?	Motion to withdraw required.
Will another counsel remain?	Notice may work only if timing and no objection requirements are met.
Is trial within 30 days?	Motion route likely required.
Is client objecting?	Motion required.
Is withdrawal mandatory under ethics rules?	Seek Court permission and protect client.
Would withdrawal prejudice client?	Court may deny or delay withdrawal.
Is false evidence already before Court?	Remedial measures may be needed beyond withdrawal.

B. Discipline Decision Table

Question	If Yes
Was practitioner convicted of a felony?	Rule 202 discipline and reporting issue.
Was practitioner convicted of fraud-related crime?	Rule 202 discipline and reporting issue.
Was practitioner disciplined by another court?	Report within 30 days; possible discipline.
Was practitioner suspended by a federal agency?	Report if agency has disciplinary jurisdiction.
Did practitioner violate Model Rules, Tax Court rules, or Court orders?	Rule 202 discipline possible.
Did practitioner engage in contempt or misconduct during trial?	Immediate suspension up to 60 days possible.
Was practitioner disbarred or suspended more than 60 days?	Reinstatement by Court order required.

C. Integrated Ethics Trigger Table

Trigger	First Rule to Discuss	Additional Rules
Client lies	Rule 3.3	Rule 1.16, discipline
Client fires practitioner	Rule 1.16	Rule 24 withdrawal
Practitioner misses deadline	Rule 1.3	Rule 202 discipline
Client refuses to pay	Rule 1.16	Rule 24, communication
Practitioner represents spouses	Rule 1.7	Withdrawal, confidentiality
Former client is adverse	Rule 1.9	Imputation, withdrawal
Tax preparer is counsel	Rule 3.7	Conflicts, withdrawal
Promoter pays fee	Rule 1.8	Conflicts, communication
Frivolous petition	Rule 3.1 / Rule 33	Sanctions, discipline
Unauthorized settlement	Rule 1.2 / Rule 1.4	Truthfulness, discipline
Direct contact with represented taxpayer	Rule 4.2	Limited appearance status

XXX. Student Rule Statements

A. Withdrawal Rule Statement

A Tax Court practitioner who has entered an appearance may withdraw only by complying with Tax Court Rule 24. Withdrawal by notice is available only when another counsel remains, the notice is timely, and there is no objection; otherwise, a motion to withdraw is required.

B. Substitution Rule Statement

A substitution of counsel allows new counsel to appear and current counsel to withdraw if the substitution is timely, signed by both current and substituted counsel, includes required information, gives prior notice, and states that there is no objection.

C. Client Protection Rule Statement

When representation ends, the practitioner must take reasonable steps to protect the client, including reasonable notice, time to obtain new counsel, surrender of client papers and property, refund of unearned fees or expenses, and protection of deadlines and confidentiality.

D. Discipline Rule Statement

The Tax Court may discipline a practitioner for qualifying criminal convictions, discipline by another court, violations of the ABA Model Rules, Tax Court rules, Court orders or instructions, or other conduct unbecoming a member of the Tax Court Bar.

E. Reporting Discipline Rule Statement

A Tax Court Bar member must report certain convictions, discipline, disbarment, or suspension to the Chair of the Committee on Admissions, Ethics, and Discipline in writing within 30 days after entry of the judgment of conviction or order of discipline.

F. Integrated Ethics Rule Statement

In mixed legal ethics questions, the practitioner must identify the client, counsel status, conflicts, competence, communication, candor, fees, contact rules, meritorious claims, and whether withdrawal, substitution, remedial measures, or discipline is required.

XXXI. Exam Attack Outline

When answering USTCP withdrawal, substitution, discipline, and integrated ethics questions:

1. Identify whether the practitioner has entered an appearance.
 2. Determine whether the appearance is general or limited.
 3. Determine whether withdrawal, substitution, or Notice of Completion applies.
 4. If withdrawal is sought, decide whether notice or motion is required.
 5. Check timing: more than 30 days before trial or within 30 days.
 6. Determine whether another counsel remains.
 7. Determine whether any party objects.
 8. Include required notice and client contact information.
 9. Apply ABA Model Rule 1.16 for mandatory or permissive withdrawal.
 10. Protect client interests after termination.
 11. Avoid unnecessary disclosure of confidential information in withdrawal papers.
 12. If discipline issue appears, identify Rule 202 trigger.
 13. Check reporting duty and 30-day deadline.
 14. Identify possible discipline: suspension, disbarment, reprimand, admonition, or other sanction.
 15. For integrated questions, cross-check conflicts, candor, fees, communication, contact rules, meritorious claims, and witness problems.
 16. Conclude with the required ethical action.
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XXXII. Bottom-Line Rule

For USTCP exam purposes, withdrawal is not informal. Once a practitioner appears in a Tax Court case, the practitioner must remain responsible until withdrawal, substitution, completion of a limited appearance, or case conclusion occurs under the rules. Discipline questions focus on whether the practitioner violated the ABA Model Rules, Tax Court rules, Court orders, reporting duties, or standards of professional conduct. Integrated ethics questions require students to identify all overlapping issues and state the required corrective action clearly.