

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

**N o t i c e**  
+ ,

CC-2002-039

• -  
October 15, 2002

Subject: Sanctions Officer Procedures Cancellation Date: Upon incorporation into the CCDM

### Purpose

This is to remind attorneys of procedures with respect to sanctions, including sanctions against opposing counsel, in Tax Court and other litigation. Modifications to the procedures, as set forth below, eliminate the requirement for Procedure & Administration to coordinate with General Legal Service in certain sanctions matters.

### Discussion

As provided in Executive Order 12988 on Civil Justice Reform, a motion for sanctions must be reviewed by the agency sanctions officer. The Associate Chief Counsel (Procedure and Administration) is the designated sanctions officer for the Office of Chief Counsel.

Sanctions subject to these procedures may include motions to sanction a taxpayer's representative for violations of section 6673(a)(2), or sanctions under the Tax Court Rules of Practice and Procedure, including, for example, T.C. Rules 33(b), 50(a), 70(e)(2), 90(d)(2), 104(c)(4) and 121(f). Motions for sanctions may also rely on the Tax Court's inherent power to regulate conduct in cases before it to justify sanctions against a taxpayer. Matters involving conflicts of interest are subject to these procedures. Also subject to these procedures are sanctions imposed or sought to be imposed against Chief Counsel attorneys or Service employees. Requests for imposition of the section 6673(a)(1) penalty and motions for attorneys fees (unless involving alleged misconduct by counsel) are generally not subject to these procedures.

### Procedure for Seeking Sanctions

Attorneys should normally attempt to resolve disputes with opposing counsel that might lead to the filing of a sanctions motion before turning to more formal procedures. In seeking to resolve a dispute, attorneys should not, however, send opposing counsel correspondence threatening to seek sanctions or orally threaten to seek sanctions. If informal resolution is not possible, and the attorney believes sanctions may be warranted against opposing counsel, then the attorney

---

Filing Instructions: Binder \_\_\_\_\_ Master Sets: NO  RO  NO: Circulate \_\_\_ Distribute   
To: All Personnel \_\_\_ Attorneys  In: all offices  
RO: Circulate \_\_\_ Distribute  to: All Personnel \_\_\_ Attorneys  In: all offices  
Other National FOIA Reading Rooms  
Electronic Filename: sanction.pdf Original signed copy in: CC:FM:PM:P

should consult with his or her supervisor concerning the matter. If they decide, after consultation, that sanctions may be warranted, then the attorney or supervisor should contact Branch 3 of Administrative Provisions & Judicial Practice (APJP:3) in the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 622-7940 or (202) 622-7950 to discuss the matter.

Depending on the facts and circumstances of the particular case, Branch 3 may advise that a conference call with the court or a letter to the practitioner are advisable initial steps. Any written product that results, whether a letter or motion for sanctions, should be sent through TSS4510 to APJP:3 for review, along with any pleadings, correspondence or other documents relating to the proposed sanctions. APJP:3 will coordinate with the Associate office having subject matter responsibility for the underlying issue in the case, as appropriate.

Current procedures require APJP:3 to routinely coordinate all such motions with the Ethics and General Government Law Branch of the Office of Associate Chief Counsel (General Legal Services). Effective upon the date of the release of this Notice, however, APJP:3 will no longer routinely coordinate all motions for sanctions with GLS. Instead, APJP:3 will only coordinate motions for sanctions with GLS if the draft explicitly asserts that opposing counsel's conduct violates professional ethics rules, or some other circumstance suggests that coordination is advisable. For example, a motion for sanctions under T.C. Rule 104(c)(4) for failure to comply with the rules governing discovery and admissions would not routinely be submitted to the GLS under the new procedure.

After review by APJP:3 and, as needed, GLS, the proposed motion will be forwarded through the Assistant Chief Counsel (Administrative Provisions & Judicial Practice) to the Associate Chief Counsel (Procedure and Administration). No motion may be filed until finally approved by the Associate Chief Counsel (Procedure and Administration).

### Conflict of Interest Letters

Sanctions officer procedures also apply to letters advising opposing counsel of a potential conflict of interest and letters advising opposing counsel of the potential filing of a motion to disqualify, based on a conflict of interest under T.C. Rule 24(g). Effective as of the date of this notice, APJP:3 will no longer coordinate these letters with GLS. In contrast, correspondence and motions related to disqualification under the post-employment statute, 18 U.S.C. § 207, and Rule 1.11 of the ABA Model Rules of Professional Conduct, based on prior participation during government service in the same particular matter involving specific parties, will be coordinated with GLS, since GLS is the Service's legal advisor in post-employment matters.

### Other Sanctions Matters

Motions for contempt of court against any person under section 7456(c) or under any rule of practice and procedure of the Tax Court, and recommendations for sanctions to the Department of Justice in civil tax cases require review and approval pursuant to the procedures described above. Recommendations for sanctions proposed under the Federal Rules of Civil Procedure will be made by letter to the Department of Justice. The attorney responsible for the case should prepare and submit to APJP:3 through TSS4510 a draft letter recommending sanctions, which describes the factual basis for sanctions. The attorney should also forward any pleadings, correspondence or other documents relating to the proposed sanctions.

Attorneys should also advise APJP:3 of any sua sponte order by a court rendering sanctions against opposing counsel in a tax case. APJP:3 in turn will advise the sanctions officer of such order.

Counsel referrals of private practitioners to the Director of Practice should also be sent for sanctions officer approval through APJP:3, who will coordinate the complaint with GLS. Likewise, referrals of practitioners to the Tax Court for disciplinary proceedings, pursuant to T.C. Rule 202, or to disciplinary boards based on conduct involving tax litigation, should be made through the sanctions officer following coordination by APJP:3 with GLS.

#### Sanctions Against Counsel Attorneys

If a motion falling within any of the above categories is filed by a petitioner in the Tax Court with respect to a Counsel attorney or a Service employee, APJP:3 should be immediately notified. Further, any proposed response or proposed notice of objection to such motion must be reviewed by APJP:3 and is subject to sanctions officer procedures. If the taxpayer's motion seeks sanctions against a counsel attorney, APJP:3 will coordinate with GLS. APJP:3 should also be advised of any sua sponte order of a court determining or proposing to determine sanctions against a Counsel attorney or Service employee. APJP:3 will promptly forward the matter to the sanctions officer.

Any questions regarding these procedures should be directed to Blaise Dusenberry, Special Counsel, Administrative Provisions & Judicial Procedures, at 202-622-7950 or George Bowden, Special Counsel, Procedure & Administration, at 202-622-3400. General questions regarding sanctions should be directed to APJP:3 at 202-622-7940.

\_\_\_\_\_  
/s/  
Deborah A. Butler  
Associate Chief Counsel  
(Procedure & Administration)