MacPherson-Sanford Trust, Sherley MacPherson, Trustee, et al. , Petitioners v. Commissioner of Internal Revenue, Respondent, 52 T. C. 580 (1969)

A former government attorney may represent a private client against the government if the matters are not substantially related to those handled during government service and no confidential information is at risk.

Summary

Henry C. Clark, a former IRS attorney, was challenged for representing trusts against the IRS in the Tax Court due to his prior involvement in related cases. The IRS argued Clark's representation violated ethical canons due to potential conflicts of interest. The court found no substantial relationship between Clark's prior work on Holdeen's individual tax cases and the trust cases, nor evidence that Clark accessed confidential information. The court denied the motion to disqualify, emphasizing that the trust cases were distinct from the individual cases Clark worked on, and his representation did not prejudice the government.

Facts

Henry C. Clark, formerly an IRS attorney in the Collection Litigation Division, was involved in defending against injunction and refund suits by Jonathan Holdeen, the settlor of the trusts. After retiring, Clark was retained to represent the trusts in Tax Court proceedings against the IRS. The IRS moved to disqualify Clark, arguing his prior government work created a conflict of interest. Clark had not worked on the trust cases while at the IRS, and regional counsel had initially approved his representation before reversing their position.

Procedural History

The IRS filed a motion to disqualify Clark from representing the trusts in Tax Court. The case was heard before the U. S. Tax Court, where evidence was presented on Clark's prior involvement with Holdeen's cases. The Tax Court ultimately denied the motion to disqualify Clark.

Issue(s)

1. Whether Henry C. Clark's representation of the trusts violated the ethical canons by creating a conflict of interest due to his prior employment with the IRS?

Holding

1. No, because Clark did not participate in the trust cases while employed by the IRS, and there was no evidence he had access to confidential information relevant to these cases.

Court's Reasoning

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The court applied the Canons of Professional Ethics, focusing on canons 6, 36, and 37, which address conflicts of interest and confidentiality. The court determined that Clark's prior work was limited to Holdeen's individual cases, not the trust cases, and thus there was no substantial relationship between the matters. The court emphasized the need for specific proof of a conflict when dealing with former government attorneys due to the broad scope of government work. The court also noted that the IRS had initially approved Clark's representation, and no evidence showed Clark used or could use confidential information to the government's disadvantage. The court cited cases like United States v. Trafficante, distinguishing it based on the lack of direct involvement by Clark in the trust cases. The court concluded that Clark's representation did not violate the ethical canons or prejudice the government.

Practical Implications

This decision clarifies that former government attorneys are not automatically disqualified from representing clients against the government. Attorneys must ensure no substantial relationship exists between their prior government work and the current case, and they must not have access to relevant confidential information. The ruling encourages settlement negotiations by allowing attorneys like Clark, who may have valuable insights, to participate. It also underscores the importance of the government's initial approval of representation, which can influence later disqualification efforts. Subsequent cases may reference this decision when addressing similar issues of conflict of interest involving former government attorneys.

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