Duffey v. Commissioner, 91 T. C. 81, 1988 U. S. Tax Ct. LEXIS 93, 91 T. C. No. 9 (1988)

An attorney who is likely to be a necessary witness at trial must be disqualified from acting as an advocate at that trial unless specific exceptions apply.

Summary

In Duffey v. Commissioner, the U. S. Tax Court disqualified the petitioners' attorney from representing them at trial due to his likely necessity as a witness on the issue of tax fraud. The court applied Rule 3. 7(a) of the American Bar Association Model Rules of Professional Conduct, which prohibits an attorney from serving as both advocate and witness unless the testimony relates to an uncontested issue, the nature and value of legal services, or disqualification would cause substantial hardship. The court determined that none of the exceptions applied, emphasizing the importance of the attorney's testimony in proving fraud and the adequacy of time for petitioners to secure new counsel.

Facts

William and Frieda Duffey were accused of failing to report income derived from illegal drug distribution. The Commissioner of Internal Revenue sought to prove fraud to overcome the statute of limitations defense raised by the Duffeys. G. Alohawiwoole Altman, the Duffeys' attorney, had prepared their tax returns for two of the three years in question and represented various trusts linked to the Duffeys. The Commissioner intended to call Altman as a witness to testify about the Duffeys' potential concealment of unreported income and the purpose of the trusts, which were central to the fraud allegations.

Procedural History

The Commissioner moved to disqualify Altman from representing the Duffeys at trial. The motion was filed well before the trial date, giving the Duffeys ample time to secure new counsel. The Tax Court considered the motion under Rule 201(a) of the Tax Court Rules of Practice and Procedure, which requires attorneys to adhere to the ABA Model Rules of Professional Conduct.

Issue(s)

1. Whether Altman, as a likely necessary witness, is barred from serving as the Duffeys' counsel at trial under ABA Model Rule 3. 7(a)?
2. Whether any of the exceptions to Rule 3. 7(a) apply to allow Altman to represent the Duffeys at trial?

Holding

1. Yes, because Altman's testimony was deemed necessary to address the central

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issue of fraud, and his role as both witness and advocate would create a conflict of interest.
2. No, because none of the exceptions applied: the testimony related to a contested issue, did not concern the value of legal services, and the Duffeys' hardship claims were insufficient to justify an exception.

Court's Reasoning

The court applied Rule 3. 7(a) of the ABA Model Rules of Professional Conduct, which prohibits an attorney from acting as an advocate at a trial where the attorney is likely to be a necessary witness. The court found Altman's testimony critical to the fraud issue, as it could reveal whether the Duffeys concealed income from him or made false statements regarding the trusts. The court rejected the Duffeys' arguments that Altman's testimony would relate to an uncontested issue or that his disqualification would cause substantial hardship. The court noted that the Commissioner's timely motion was not a tactical move, and the Duffeys had sufficient time and resources to retain new counsel. The court emphasized the importance of maintaining the integrity of the legal process and avoiding conflicts of interest.

Practical Implications

This decision underscores the importance of separating the roles of advocate and witness in legal proceedings, particularly in tax fraud cases where an attorney's testimony may be crucial. Attorneys and clients must be aware of potential conflicts that could lead to disqualification and plan accordingly. The ruling may influence how similar cases are handled, with attorneys being more cautious about their dual roles. It also highlights the need for timely disclosure of potential conflicts to avoid last-minute disruptions to trial proceedings. Subsequent cases may reference Duffey when addressing attorney disqualification under similar circumstances.

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