Fry v. Commissioner, 92 T. C. 368 (1989)

The Tax Court has discretion to grant or deny an attorney's motion to withdraw as counsel of record, balancing the interests of the client, opposing party, attorney, and court.

Summary

In Fry v. Commissioner, the U. S. Tax Court addressed attorney Roger G. Cotner's motion to withdraw as counsel for the Frys due to non-payment of fees. The case involved significant tax deficiencies and complex legal issues. The court granted the withdrawal, recognizing Cotner's financial burden but also extended the briefing deadlines and required Cotner to turn over all case files to mitigate prejudice to the Frys. This ruling underscores the court's discretion in managing attorney withdrawal while considering the impact on all parties involved.

Facts

The Frys retained Attorney Cotner to represent them in a tax dispute involving substantial deficiencies. Cotner devoted over 478 hours to the case and advanced litigation costs. Despite multiple fee arrangements, the Frys failed to meet their payment obligations, accumulating a debt of $31,945. 67. Cotner moved to withdraw after trial but before briefs were due, citing financial hardship and ethical concerns due to the Frys' failure to pay. The Frys opposed the motion, citing potential prejudice to their case and their inability to secure new counsel quickly.

Procedural History

The Commissioner issued notices of deficiency to the Frys, leading to the filing of a petition in the U. S. Tax Court. After a multi-day trial, Cotner moved to withdraw under Rule 24(c) of the Tax Court Rules of Practice and Procedure. The Frys objected and requested an extension of briefing deadlines if withdrawal was granted. The court issued an interim order extending the deadlines by 30 days and ultimately decided on the withdrawal motion.

Issue(s)

1. Whether the Tax Court has discretion to grant or deny an attorney's motion to withdraw as counsel of record under Rule 24(c)?
2. Whether Attorney Cotner's motion to withdraw should be granted given the Frys' failure to pay and the potential prejudice to their case?

Holding

1. Yes, because Rule 24(c) explicitly states that the court may, in its discretion, deny such a motion.
2. Yes, because the Frys failed to meet their financial obligations to Cotner, but the

© 2025 SCOTUSreports.com. All rights reserved.

court mitigated potential prejudice by extending briefing deadlines and ordering Cotner to turn over case files.

Court’s Reasoning

The court exercised its discretion under Rule 24(c), which allows for the denial of a withdrawal motion but does not specify standards for granting it. The court considered the Model Rules of Professional Conduct, particularly Rule 1. 16, which governs attorney withdrawal. The court balanced the interests of all parties: the Frys’ potential prejudice, Cotner’s financial hardship, the Commissioner’s interests, and the court’s efficiency. Cotner’s situation was deemed untenable due to the Frys’ non-payment, and the court found that withdrawal was justified under Model Rule 1. 16(b)(4) and (5). However, to mitigate prejudice, the court extended briefing deadlines and ordered Cotner to provide all case materials to the Frys.

Practical Implications

This decision reinforces the Tax Court’s authority to manage attorney withdrawal, emphasizing the need to balance competing interests. Attorneys should be aware that while they may seek withdrawal due to non-payment, the court will consider the impact on the client and case. Clients must understand their financial obligations to counsel, as failure to pay can lead to withdrawal at critical stages of litigation. The ruling also highlights the importance of ethical considerations in attorney-client relationships and the court’s role in ensuring fairness and efficiency in proceedings. Subsequent cases may reference Fry v. Commissioner when addressing similar withdrawal motions in tax disputes or other complex litigation.

© 2025 SCOTUSreports.com. All rights reserved.