

matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(3) *Initiation of Proceedings:* To initiate formal disciplinary proceedings, the Court shall enter an order (or, where counsel is appointed, such counsel shall obtain an order of the Court upon a showing of probable cause) requiring the practitioner to show cause within 30 days after service of that order upon that practitioner, why the practitioner should not be disciplined.

(4) *Hearing:* Upon the practitioner's answer to the order to show cause, if any issue of fact is raised or the practitioner wishes to be heard in mitigation, then this Court shall set the matter for prompt hearing before one or more Judges of this Court. However, if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, then the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge.

(5) *Right to Counsel:* In all proceedings conducted under the provisions of this Rule, the practitioner shall have the right to be represented by counsel.

(c) **Reinstatement:** (1) *After Disbarment or Suspension:* A practitioner suspended for 60 days or less shall be automatically reinstated at the end of the period of suspension. A practitioner suspended for more than 60 days or disbarred may not resume practice until reinstated by order of this Court.

(2) *Hearing on Application:* A petition for reinstatement by a disbarred or suspended practitioner under this Rule shall be filed with the Court. Upon receipt of the petition, the Court may promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court. However, if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, then the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge. The Judge or Judges assigned to the matter shall, as promptly as the Court's business shall permit, schedule a hearing at which the practitioner shall have the burden of demonstrating by clear and convincing evidence that the practitioner has the moral qualifications, competency and learning in the law required for admission to practice before this Court and that the practitioner's resumption of such practice will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest.

(3) *Successive Petitions:* No petition for reinstatement under this Rule shall be filed within 1 year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

(d) **Presentation to the Court:** When counsel is to be appointed pursuant to this Rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a practitioner, this Court shall appoint as counsel to the Court a member of the Bar of this Court who is a resident of or who practices in the same Federal judicial circuit (see 28 U.S.C. Section 41), except the Federal Circuit, as the Federal judicial cir-

cuit which includes the practitioner's place of residence or practice. The practitioner may move to disqualify a person so appointed for cause, for example, if such person is or has been engaged as an adversary of the practitioner in any matter. Counsel, once appointed, may not resign unless permission to do so is given by the Court.

(e) **Jurisdiction:** Nothing contained in this Rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Code Section 7456.

TITLE XXI.—DECLARATORY JUDGMENTS

Rule 210. General

(a) **Applicability:** The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions, relating to the qualification of retirement plans, the status of certain governmental obligations, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for declaratory judgment.

(b) **Definitions:** As used in the Rules in this Title—

(1) "Retirement plan" has the meaning provided by Code Section 7476(c).

(2) "Governmental obligation" means an obligation the status of which under Code Section 103(a) is in issue.

(3) "Exempt organization" is an organization described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a) or is an organization described in Code Section 170(c)(2).

(4) "Private foundation" is an organization described in Code Section 509(a).

(5) "Private operating foundation" is an organization described in Code Section 4942(j)(3).

(6) An "organization" is any organization whose qualification as an exempt organization, or whose classification as a private foundation or a private operating foundation, is in issue.

(7) A "determination" means—

(A) A determination with respect to the initial or continuing qualification of a retirement plan;

(B) A determination as to whether prospective governmental obligations are described in Code Section 103(a); or

(C) A determination with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(8) A "revocation" is a determination that a retirement plan is no longer qualified, or that an organization, previously qualified or classified as an exempt organization or as a private foundation or private operating foundation, is

no longer qualified or classified as such an organization.

(9) “Action for declaratory judgment” is either a retirement plan action, a governmental obligation action, or an exempt organization action, as follows:

(A) A “retirement plan action” means an action for declaratory judgment provided for in Code Section 7476 with respect to the initial or continuing qualification of a retirement plan.

(B) A “governmental obligation action” means an action for declaratory judgment provided for in Code Section 7478 with respect to the status of certain prospective governmental obligations.

(C) An “exempt organization action” means a declaratory judgment action provided for in Code Section 7428 with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(10) “Administrative record” includes the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination of such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner. In addition—

(A) In the case of a determination relating to a retirement plan, the administrative record shall include the retirement plan and any related trust instruments, any written modifications thereof made by the applicant during the proceedings in respect of the request for determination before the Internal Revenue Service, and all written comments (and related correspondence) submitted to the Internal Revenue Service in those proceedings (see Section 3001(b) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1201(b)).

(B) In the case of a determination relating to an exempt organization or a private foundation or a private operating foundation, the administrative record shall include the charter or articles of incorporation or association, or trust indenture or agreement, and any similar or related documents of the organization and any modifications thereof.

(11) “Party” includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. In an exempt organization action, only the organization may be a petitioner, and in a governmental obligation action, only the prospective issuer may be a petitioner.

(12) “Declaratory Judgment” is the decision of the Court in a retirement plan action, a governmental obligation action, or an exempt organization action.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of an action for declaratory judgment under this Title unless the following conditions are satisfied:

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days (180 days in the case of a request for determination as to status of prospective governmental obligations) after the request for such determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner’s failure to make a determination with respect to the continuing qualification of the plan only if the controversy arises as a result of an amendment or termination of such plan. See Code Section 7476(a)(2)(B).

(2) There is an actual controversy. In that connection—

(A) In the case of a retirement plan action, the retirement plan or amendment thereto in issue has been put into effect before commencement of the action.

(B) In the case of a governmental obligation action, the prospective issuer has, prior to the commencement of the action, adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations.

(C) In the case of an exempt organization action, the organization must be in existence before commencement of the action.

(3) A petition for declaratory judgment is filed with the Court within the period specified by Code Section 7476(b)(5) with respect to a retirement plan action, or the period specified in Code Section 7478(b)(3) with respect to a governmental obligation action, or the period specified by Code Section 7428(b)(3) with respect to an exempt organization action. See Code Section 7502.

(4) The petitioner has exhausted all administrative remedies which were available to the petitioner within the Internal Revenue Service.

(d) Form and Style of Papers: All papers filed in an action for declaratory judgment, with the exception of documents included in the administrative record, shall be prepared in the form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action in those instances in which joinder or intervention is permitted, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action.

INTERIM AMENDMENT

For interim amendment of this Rule, see provisions set out after the Appendices to the Rules.

Rule 211. Commencement of Action for Declaratory Judgment

(a) Commencement of Action: An action for declaratory judgment shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to form of pleadings.