

Mediation Bulletin

December 1, 2008

The board established a mediation pilot program in April of 1993. By the end of June 1994, we were mediating at an approximate rate of 190 cases per year. The board continued its growth in the use of this alternative dispute resolution method to its peak in fiscal year 2000, reaching 1,210 cases accepted for mediation processing. This figure represented about 57% of the total number of notices of appeal filed at the board during that fiscal year. For fiscal year 2008, that figure would approximate 28%. Real property valuation cases constituted about 98% of our mediations for FY '08.

From fiscal years 1994 to 1998, the mediation program consistently produced success rates of 74-88%. From fiscal years 1999 to 2006, the rates improved to the low 90s. This change may be attributed to the learning curve involved in implementing such a program. Currently the success rate is about 93%.

About 99% of our mediations are conducted by telephone with very positive results. Generally, the mediation process requires the parties to meet in person to best facilitate communication. However, this possible weak point in our program seems to have been offset by other considerations such as travel costs to Columbus.

Earlier in 2008, the board temporarily suspended a large part of its mediation program to accommodate a unique scheduling situation. This would account for the drop in mediated cases during fiscal year 2008. Although the program is partially suspended, we anticipate resuming normal operations in the future. In the interim, we continue to encourage the parties to conduct settlement discussions on their own.

Mediation is assisted communication between the parties where an attempt is made to achieve a mutually acceptable agreement. Through the collaborative efforts of the parties with a neutral attorney examiner, an appeal may be resolved without incurring additional expenses and the risk of further litigation.

Although mediation is meant to be informal, the board views mediation in its procedural aspects to be comparable to a scheduled hearing. First, the representatives of the parties are expected to appear or telephone the board at the time designated in the scheduling letter. For good cause, the mediation may be continued by the attorney examiner upon written request filed at least fourteen days prior to the scheduled date, or under extraordinary circumstances within the fourteen-day period. Ohio Adm. Code 5717-1-15(A). Second, all representatives are expected to be fully prepared to discuss the subject matter and all issues involved in the appeal. In preparation for mediation, all parties should engage in meaningful and voluntary discovery. Although

the parties may exchange information in an effort to achieve a compromise, mediation is not intended to serve as an alternative to discovery. Discovery should proceed following the procedure set forth in Ohio Adm. Code 5717-1-11, recognizing that any limitation or extension of the discovery period is at the discretion of the attorney examiner. Third and most important, prior to mediation, representatives of all parties, including the taxing authorities, are expected to have secured authority to extend and respond to settlement proposals tendered at a conference. Ohio Adm. Code 5717-1-21(C). If at any time, a party concludes that mediation is inappropriate, notice should be promptly given to the board and all other parties. Finally, to effect a timely termination of the appeal, all agreed-upon dismissals, joint remands, or stipulations of value must be filed within thirty days of the date the board is notified of such undertaking. Ohio Adm. Code 5717-1-17(B).

The mediation program has become a successful and valuable part of the Board of Tax Appeals' process. However, we have come to understand that constant fine tuning of the system is important to meeting the needs of the parties. We continue to welcome comments or suggestions.