

8610.0170 VOLUNTARY ALTERNATIVE DISPUTE RESOLUTION.

Subpart 1. **Application of rule.** Cases pending in the tax court may be submitted, by agreement of all parties to the dispute, to voluntary alternative dispute resolution ("ADR"). The provisions of subparts 2, item B, and 3 apply exclusively to ADR provided by a current judge of the tax court as described in subpart 2, item A, subitem (1).

Subp. 2. **Selection of neutral.**

A. **Selection by parties or by tax court.** If the parties have agreed to voluntary ADR, the parties may elect to proceed either with:

(1) voluntary mediation by a current judge of the tax court who is not assigned to hear their case serving as neutral ("tax court mediation"); or

(2) another ADR process of the parties' agreement.

The scheduling order may establish a deadline for the completion of the ADR process.

B. **Compensation.** Tax court judges serving as neutrals in tax court mediation consent to the jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114 of the General Rules of Practice for the District Courts. No current judge of the tax court may receive any form of compensation for serving as a neutral in tax court mediation.

Subp. 3. **Attendance at mediation.**

A. **Privacy.** Tax court mediation is not open to the public except with the consent of all parties.

B. **Attendance.** An individual with the authority to settle the case on behalf of each party must attend tax court mediation, unless otherwise authorized by the tax court. The tax court may require that the attorneys who will try the case attend tax court mediation.

C. **Sanctions.** The tax court may impose sanctions, including attorney fees and costs, for failure to attend scheduled tax court mediation.

Subp. 4. **Confidentiality.**

A. **Evidence; inadmissibility.** As provided by Minnesota Statutes, section 595.02, or without the consent of all parties and an order of the tax court, statements made and documents produced in nonbinding ADR processes, such as mediation under this part that are not otherwise discoverable are not subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at trial, including impeachment.

B. **Records of neutral.** Notes, records, and recollections of the neutral are confidential, which means they may not be disclosed to the parties, the public, or anyone other than the neutral, unless:

(1) all parties and the neutral agree to disclosure, or

(2) disclosure is required by law or other applicable professional codes. No record shall be made without the parties' agreement, except for a memorandum of issues that are resolved.

Subp. 5. Communication with mediator and presiding judge.

A. Tax court mediation. Parties and their counsel may communicate ex parte with the neutral in a tax court mediation, so long as the communication relates directly to the substance of the mediation and encourages or facilitates settlement.

B. Communications to presiding judge during mediation. During mediation the presiding judge may be informed only of the following:

- (1) the failure of a party or an attorney to comply with the order to attend the process;
- (2) any request by the parties for additional time to complete mediation;
- (3) with the written consent of the parties, any procedural action by the tax court that would facilitate mediation; and
- (4) the neutral's assessment that the case is inappropriate for mediation.

C. Communications to presiding judge after mediation. When mediation has concluded, the presiding judge may be informed only of the following:

- (1) if the parties do not reach an agreement on any matter, the neutral must report the lack of an agreement to the presiding judge, including by entry on docket, without comment or recommendation, subject to subitem (3);
- (2) if the parties reach an agreement, the final settlement; and
- (3) with the written consent of the parties, the neutral's report also may identify any pending motion or outstanding legal issue, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of settlement.

Statutory Authority: *MS s 271.06*

History: *48 SR 411*

Published Electronically: *November 1, 2023*