

*Mini
Pocket*

Toolkit Mediation

for the mediator

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Toolkit Mediation for the mediator

Stages of a mediation process

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Stages of a mediation process

A mediation procedure schematically passes through several phases, which can change in time and order during the process. Sometimes all phases are passed through within one session and on other occasions only one or just a few. In addition you often have to go back to an earlier phase at a later stage. E.g. if during the options phase emotional issues keep surfacing, or if during the agreement phase it becomes clear that not all interests have been fully explored.

Ground zero Preparation and agreements

Focus: preparation, lay foundation.

Intake/preparation consultation

- How & When? Separate or joint?
- Directional meeting with lawyers?
- Confidentiality regarding intake.

Conflict of interest check ¹ (consult code of conduct)

- Am I impartial?
 - (In)Direct earlier contacts with one of the parties.
 - (In)Direct interest in the outcome of the mediation.
 - Confidential information re. the parties or the subject?
- Are there matters that can influence my neutrality?
- Further issues I have to inform the parties about?
- Do I want to contact the opposing party if requested?

Suitability check (consult factors (dis)favoring mediation checklist)

- Are the dispute and parties suitable for mediation?
- Am I suitable for these parties and this dispute?
- Co-mediation? Refer the case to another mediator?
(consult checklist co-mediation)

Managing expectations

- What do parties expect? Is it realistic, e.g. re:
 - Approach of mediation process, strategies, content expertise, specialization/experience.
 - Time scope (do parties have a deadline to meet)?
- On what aspects the parties' consent is needed in advance?
- Fee structure and how should/will the costs be borne between parties?
- Logistic arrangements.

Mediation approach/strategy

- Decide how to deal with the mediation. Prepare your strategy.
(consult strategy checklist)

Legal and administrative issues

- Mediation agreement, code of conduct, disciplinary rules, confidentiality. (www.JAMSINTERNATIONAL.com; www.schonewille-schonewille.com; www.acbmediation.nl)

Transition to phase 1:

Arrange the first mediation session with the parties.

¹ Based on the Mediator Code of conduct of ACBMediation, www.ACBMediation.com



Phase 1 Opening statements

Focus: set tone; manage expectations, first dispute scan.

Opening statement mediator (consult opening statement checklist)

- Check parties' names, first name base or last names?
- Mediation process, assignment mediator and parties:
 - Mediation is voluntary.
 - Every party, and the mediator, can discontinue participation at any time.
 - Commitment necessary.
 - No (binding) decision or solution imposed.
 - Interest and future based, not (legal) rights based.
 - Confidentiality and privacy.
 - Neutral attitude and impartiality mediator.
- Caucus (double confidentiality). (Consult checklist caucus).
- Logistical arrangements.
- Time scope, deadlines and commitments.
- Postponement judicial or other proceedings.
- Ground rules:
 - Mediator is process manager.
 - Parties manage the dispute.
 - Depending on cultural background:
No interruptions + treat each other with respect.
 - Package deals.
 - Scope of authority, constituency.
 - Do the clients have any questions?

Transition to opening statement parties: *"What do you expect from this mediation?"* or *"Who wants to start the exchange?"*

Phase 1 Opening statements (continuation)

Opening statements parties

- Who will go first? (Consult checklist strategy)
- First scan: content- and blocking issues, interests, causes of conflict (consult conflicts analysis and Intervention chart)

Main techniques (consult techniques overview)

- Listening for content, interests and blocking issues.
- Summarize.
- Check assumptions, ask control questions.
- Open, closed, straight and clarifying questions.

Transition to exploration phase: Joint summary and issue agenda

"We have to discuss ... and ... and also ... Can we settle this dispute if we find a solution to all of these topics? Or did we overlook important issues?"

Transition for caucus-mediation strategy:

"I think it is time now to continue in separate meetings ..." Attain consent on main rules for the caucus. (Consult checklist caucus).



Phase 2 Exchange and exploration

Focus: manage/structure process and communication. Move from positions and past to interests and future.

Setting up a negotiating agenda

- Categorizing:
Subdividing topics into logical categories.
- Clustering:
Placing topics under a common theme or same denominator.
- Fractionalizing:
Dividing complex themes in sub-issues that are easier to survey and to handle.
- Classifying:
Arrange issues, arrange an order to discuss themes
 - If necessary to (re)establish communication, start with an icebreaker topic.
 - If feasible, start with the blocking issue and then continue with interests.
 - Rule of thumb for classifying interests:
 1. Mutual interests
 2. Differing reconcilable interests
 3. Differing irreconcilable interestsWithin a category start with uncomplicated issues, next the more difficult topics.
- Other methods to set up a negotiating agenda:
 1. Ad hoc, first in, first discussed base.
 2. In turns, the negotiators choose what theme will be discussed next.
 3. Each party chooses her most important theme, these are discussed first..
 4. Address themes in order of importance for reaching a common goal or in serving mutual interest.
 5. The parties decide what issue should be resolved first.

6. Combine themes and discuss them jointly.
7. Fruit tree approach (pick low/ hanging fruit first).

Exploration of interests

- Move focus from past to future.
- Focus on interests instead of positions.
- Develop understanding for the other parties' point of view.

Main techniques and methods (consult techniques table)

- Listening for content, joint and differing interests and blocking issues, openings.
- Structuralize the process and communication.
- (Suggest the parties to) Paraphrase.
- Acknowledgement.
- Reframe, re-contextualize.
- Circular, mirroring, confronting, peeling-off, open and reality testing questions.
- Summarize.
- Dealing with emotions.
- Check BATNA, WATNA, RATNA, leverage and ZOPA.
- Caucus. (Consult caucus checklist)
- Ladder of inference, clarify perspectives and psychological barriers.
- Balance power, empowerment, and empathy.

Transition to phase 3: verify if all interests are on the table, blocking issues identified, emotions dealt with, that there is understanding for each others' points of view and the own role in the arising and progression of the conflict.

Summarize + *"Now that it is clear that ... and ... We need to find a solution for ... and"*



Phase 3 Generating options & negotiation

Focus: generate as many mutual gain options as possible, reach agreement.

- Breaking deadlocks.
- Balance power, make sure all parties participate.
- Attend to the constituency and scope of authority.
- Develop objective criteria.
- Set priorities.
- Stimulate creativity and 'out-of-the-box-thinking' through techniques for generating options:
 - Brainstorm. (See [checklist brainstorming](#))
 - Expand the pie.
 - Prepare lists and discuss them.
 - Develop one mutual vision.
 - Seek advice from experts.
 - Ask the mediator to develop options as well.
 - Consult external sources.
 - Use different frames of thinking:
 - The "correctly-wrong" method.
 - The provocative analogy.
- Aim at package deals; pay especially attention to this aspect when interim solutions are involved.

Transition to phase 4: summarize results, time and energy invested, list decisions to enclose in settlement agreement.

"I think we are ready to draft an agreement."

Phase 4 Finalizing agreement & closure

Focus: finalize agreement and reaching a deal that can be implemented and that is durable.

In case of agreement (in part)

- Prepare draft agreement (if applicable combined with a list of remaining difficulties/options):
 - Check balance (all parties need to be addressed and do something) and use of neutral language.
 - Make it SMART
 - S pecific: unambiguous what has been agreed.
 - M easurable: clear when agreement is fulfilled.
 - A chievable: it can be done.
 - R ealistic: parties will do it.
 - T ime limit: it has a defined ending.
 - Avoid dependency on contingencies.
 - Avoid legalize (parties must recognize their solution and their language in the agreement).
- Check communication with constituency and face saving aspects. (Consult [constituency checklist](#))
- Stress importance of compliance.
- Provision in case parties encounter problems during implementation (e.g. mediation clause).

In case of no agreement

- Positive summary of results and commitment.
- Make a list of what has been accomplished (e.g. understanding, clarification of the disputed topics, agree to disagree).
- Clarify next steps.



Suitability check

The following list can help to determine whether mediation is suitable for this kind of dispute and these particular parties.

The most important factors favoring mediation:

- The parties want to resolve their dispute.
- They are willing and able to negotiate about the conflict or at least they want to discuss it.



Other factors favoring mediation

- The parties want to end their dispute within a short time period.
- There is a long-term relationship and the continuation or the thoughtful and considerate termination of the relationship is important.
- Treatment issue or an upset communication.
- The parties have a desire to reach a settlement themselves and on their own terms.
- A legal judgment does not or would not (totally) resolve the underlying conflict.
- Confidentiality or privacy is important.
- There are more than two parties involved in the dispute.
- The dispute concerns several claims/conflicts.
- The case concerns substantive technical and/or complex content issues or requires specialist knowledge.
- It is an international case (with expected jurisdiction or enforcement issues).

Factors disfavoring mediation

- At least one party benefits from delay and does not want to surface this interest during the mediation (hidden agenda).
- One of the parties is acting in bad faith.
Please note that distrust (of the opponent) does not necessarily imply bad faith. Often it is hard to be sure that a party in mediation is participating in good faith. This is especially so when parties have come to the mediation table at the request of a third party, such as a judge or the management of a company. When you doubt the motives for participation, you can first explore in a joint session what the parties expect from the mediation. Next you can address the issue in a caucus by asking questions about the commitment to and the expectation for the mediation. If there are strong indications that a party is not participating in good faith, you can ask confronting questions, if necessary.
- There are no new developments and the same representatives have already tried mediation to solve this conflict at an earlier stage without a positive result.
- A precedent is needed (for example an explanation of the General Terms) or a principle of law needs to be established.
- A party is particularly concerned with publicly asserting or proving her own right (e.g. in order to send a wider message).
- A party is incapable of taking responsibility for decisions or is insufficiently able to represent or protect her own interests.
- There is an extreme imbalance of power.



The initial contact (intake)



The intake of mediation is also called ground zero. As soon as the first contact is made by one or more parties, the mediator has to make several decisions. For example, the mediator will have to decide how to handle ethical questions like how to react when approached only by one party, and how to handle practical aspects such as proceeding with the initial contact and managing the mediation.

Issues to consider during the intake consultation

- Are the parties and the dispute suitable for mediation? Is another method to resolve the dispute more beneficial in this case?
- As a solo mediator or with a co-mediator? (two equally competent mediators or a professional mediator with a less experienced one).
- What form should the intake consultation take?
 - By telephone, in writing, or in person?
 - At the beginning of the first mediation session or in an earlier phase?
 - Separate consultations or a joint intake consultation?
 - (Also) a directional conversation with the advisors or lawyers concerned?
 - Does confidentiality apply to the intake consultations? How can confidentiality be assured?
- Conflict of interest check
 - Am I impartial as a mediator? Facts and circumstances which could provoke doubt about the mediator's impartiality, e.g.:

- Direct or indirect earlier contacts with one of the parties. E.g. when the mediator, or his practice or employer, has acted professionally for one of the parties, or has personal or business connections.
- (In)Direct interest in the outcome of the mediation.
- Possession of confidential information in relation to one of the parties or the subject of the Mediation.

(For further guidance you can consult the mediator code of conduct that is applicable in your country or the country where the mediation will take place.

- Are there matters that can influence my neutrality such as ethical concerns?
- Are there further issues I should inform the parties about?
- When I have been contacted by just one party, should I contact the opposing party and invite or try to persuade her to enter into mediation if the party initiating the mediation requests me to do so? Could doing so impact on my impartiality as a mediator? If so, how would I handle the situation?

- Is the dispute suitable for mediation? And the parties?
- Managing expectations.
 - What do the parties expect from the mediation? Are their expectations realistic?
 - Can the mediator meet these expectations as to:
 - Mediation strategies.
 - Expertise concerning the content of the dispute, specialization and experience.
 - Approach of the mediation process.
 - Time scope (do the parties have a deadline?).
- On what particular aspects of the mediation process do I need the parties' consent in advance?
- Co-mediation?
- Would it be better to refer the case to another mediator?



- ☐ Fees and costs.
 - Do parties know what my fees are and what services will be included?
 - What is the allowance for traveling expenses and other out-of-pocket costs, traveling time, report writing or preparation and drafting of any settlement or other agreements?
 - Can I give an estimate of the expected time/costs?
 - Would I (at request of the parties) agree in advance to a time-limit for the entire mediation process or a maximum sum in mediator fees?
 - How will/should the costs be borne between the parties.

- ☐ Logistic arrangements:
 - The time required for the sessions.
 - Procedures to accommodate:
 - Agenda
 - Venue.
 - Adjournments.
 - Actual or potential deadlines.
 - Approach to the mediation process.

- ☐ How much time should be scheduled for the initial mediation session? What is the preferred time scale, when should the first meeting take place?

- ☐ Who will attend? What representatives of the parties are required? Are other parties involved in the dispute?

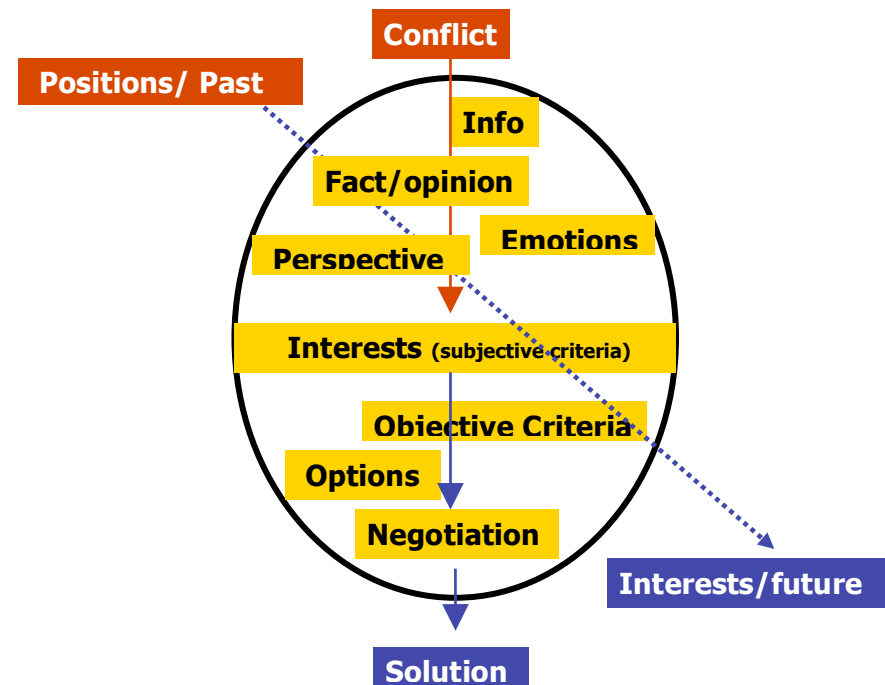
- ☐ Do lawyers or other advisors attend the mediation sessions? And if so are the parties present as well?

- ☐ Do I want information, documents beforehand? What?



Mediation rules, model ADR clauses and a mediator code of conduct can e.g. be found at www.resultadr.com (Dutch and English), and for cross-border mediations www.jamsinternational.com.

What happens during a mediation process?



The mediation agreement and the main ground rules for mediation

- Effectively mediation begins with the signing of a mediation agreement, in the course of which the mediation rules are acknowledged as applicable.
- Participation is voluntary but once mediation starts it is not non-committal. In the mediation agreement, there is normally a clause that obliges all participants to co-operate actively and in good faith in trying to resolve their dispute through mediation. However, each participant, including the mediator, can discontinue the mediation at any time and without giving a reason. Accordingly it is advisable to agree in advance that if this happens, there will be an exit discussion in which issues like next steps, how to inform constituents etc. can be covered before the mediation is formally concluded.
- The Mediator may obtain information separately from any party through discussions, correspondence or otherwise, e.g. in a caucus.
- The Mediator will treat as confidential any information provided to him by any of the parties, in correspondence, discussions or otherwise, unless otherwise agreed.
- Parties, their advisors and everyone else involved in the mediation must sign a confidentiality undertaking in which they commit to keeping confidential any information supplied and/or recorded in any form during or in connection with the mediation, including all positions adopted or proposals made by the parties and the progress made in the mediation, unless otherwise agreed.
- Confidentiality should also cover any judges, arbitrators or other adjudicators involved in the dispute.
- The parties are deemed to have waived the right to use as evidence against one another, at law or otherwise, anything that arose during the mediation, including any witness or expert statements.
- Outcomes should be recorded in writing, preferably in a formal settlement agreement. On signing this agreement the mediation is concluded.
- Party representatives who participate in the mediation must be authorized to sign such an agreement.
- Unless otherwise agreed (in writing), the parties cannot be bound by positions they have adopted or proposals they have made during the mediation, nor by any statements they have made. By using package deals the parties agree not to be bound to anything developed during the mediation until the signing of the settlement agreement (except for explicit binding agreements made in between). Please note that in some jurisdictions (e.g. The Netherlands) package deals must be agreed in writing in order to be enforceable.
- The mediator is bound to a code of conduct, in which covers issues like impartiality, confidentiality, professionalism and expedition.
- In some jurisdictions, a mediator is also subject to a formal complaint scheme and/or disciplinary rules.



The opening statement of the mediator

Issues a mediator needs to address during his "opening statement"

- Names of parties involved (check) and of the mediator.
- Whether to call someone by his/her first name or to use the last name?
- What does mediation involve and what will be the role and tasks for the mediator and the parties, (insofar as this has not already been covered during the start-up phase and the initial discussions). If necessary, this can be explained by going through the terms of the mediation agreement and ground rules:
 - Mediation is voluntary and non-binding.
 - All participants, including the mediator, can discontinue their participation in the mediation at any time (although it is advisable to prearrange an exit discussion to conclude the mediation).
 - Commitment of all parties involved.
 - No binding decision or ruling is imposed, self-determination of the parties, a resolution of their own.
 - Confidentiality and privacy.

- Neutral attitude and impartiality of the mediator.
- The possibility of having caucus sessions.
- If not addressed during the start-up phase, make logistical arrangements like the time required for meetings, procedures for scheduling meetings, possible deadlines of parties, etc.
- Postponement, suspension or other management of any pending legal or other proceedings in relation to the dispute.
- Ground rules.
- Do the clients have any questions?



Cost benefit analysis



You can use the cost-benefit analysis in three different ways while assisting corporate clients in resolving a dispute.

- **Checklist:** Mark the squares in the form costs and in the form benefits of both the column mediation and the column litigation/arbitration. This enables you to see at a glance what method to resolve the dispute overall offers more advantages.
- **Calculation of costs:** For a quantitative analysis you can calculate the costs per entry for both columns on the form costs and the form benefits.
- **Reality testing:** The form can be used as a tool for reality testing (risk analysis).

FORM DISPUTE COSTS 1

Mediation	Costs	Litigation/arbitration	Costs
Costs of the dispute to date	\$	Costs of the dispute to date	\$
<p>Time</p> <p><input type="checkbox"/> Missing deadline(s) \$ _____ (estimation).</p> <p><input type="checkbox"/> Lost office hours executives/managers involved: Person 1: hours spent on solving conflict _____ x \$ _____ (hourly pay/fee).</p> <p>Person 2: \$ _____ Person 3: \$ _____ Person 4: \$ _____</p> <p><input type="checkbox"/> Office hours spent on dispute by other departments (E.g. Legal services, HRM): _____ x \$ _____ (hourly pay/fee).</p> <p>Costs caused by the dispute</p> <p>Reputation damage, negative publicity (estimation) \$ _____.</p> <p><input type="checkbox"/> Negative impact on company relationships (estimation) \$ _____.</p> <p><input type="checkbox"/> Projects/work postponed/delayed/ cancelled (estimation) \$ _____.</p> <p><input type="checkbox"/> Negative impact on personal life of parties concerned (estimation) \$ _____.</p> <p><input type="checkbox"/> Negative impact on quality output of parties concerned (estimation) \$ _____.</p> <p><input type="checkbox"/> Fee advisors/lawyers _____ hours x € _____ other costs \$\$ _____.</p> <p><input type="checkbox"/> Extra costs spend due to the dispute (E.g. media-consultant, PR campaign, etc.), \$ _____ (estimation).</p> <p><input type="checkbox"/> Other costs (E.g. personal turnover, adjustment within the organisation or method of working, procedures, sabotage, absence, etc.), \$ _____ (estimation).</p>		<p>Time</p> <p><input type="checkbox"/> Missing deadline(s) \$ _____ (estimation).</p> <p><input type="checkbox"/> Lost office hours executives/managers involved: Person 1: hours spent on solving conflict _____ x \$ _____ (hourly pay/fee).</p> <p>Person 2: \$ _____ Person 3: \$ _____ Person 4: \$ _____</p> <p><input type="checkbox"/> Office hours spent on dispute by other departments (E.g. Legal services, HRM): _____ x \$ _____ (hourly pay/fee).</p> <p>Costs caused by the dispute</p> <p>Reputation damage, negative publicity (estimation) \$ _____.</p> <p><input type="checkbox"/> Negative impact on company relationships (estimation) \$ _____.</p> <p><input type="checkbox"/> Projects/work postponed/delayed/ cancelled (estimation) \$ _____.</p> <p><input type="checkbox"/> Negative impact on personal life of parties concerned (estimation) \$ _____.</p> <p><input type="checkbox"/> Negative impact on quality output of parties concerned (estimation) \$ _____.</p> <p><input type="checkbox"/> Fee advisors/lawyers _____ hours x € _____ other costs \$\$ _____.</p> <p><input type="checkbox"/> Extra costs spend due to the dispute (E.g. media-consultant, PR campaign, etc.), \$ _____ (estimation).</p> <p><input type="checkbox"/> Other costs (E.g. personal turnover, adjustment within the organisation or method of working, procedures, sabotage, absence, etc.), \$ _____ (estimation).</p>	
Subtotal costs to date \$		Subtotal costs to date \$	



FORM DISPUTE COSTS 2

Mediation	Costs	Litigation/Arbitration	Costs
(Future) Costs for resolving the dispute		(Future) Costs for resolving the dispute	
\$		\$	
<input type="checkbox"/> Fee mediator ____ hours\$ x € _____, other costs (e.g. venue, travel expenses) \$ _____. <input type="checkbox"/> Fee lawyer(s) ____ hours x \$ _____, other costs (e.g. administration, travel expenses) \$ _____. <input type="checkbox"/> Fee experts/ assistants ____ hours x \$ _____, other costs \$ _____. <input type="checkbox"/> Slur on reputation, negative publicity \$ _____. <input type="checkbox"/> Negative impact on company relationships (estimation) € _____. <input type="checkbox"/> Negative impact on personal life of parties concerned (estimation) \$ _____. <input type="checkbox"/> Negative impact on quality output of parties concerned (estimation) \$ _____. <input type="checkbox"/> Additional costs (estimation) \$ _____. <input type="checkbox"/> Other costs (estimation) \$ _____. Time <input type="checkbox"/> Time involvement for resolving dispute for executives/managers: Person 1: hours spent on solving conflict ____ x \$ _____ (hourly pay/fee). Person 2: \$ _____ Person 3: \$ _____ Person 4: \$ _____. <input type="checkbox"/> Time involvement for resolving dispute by other departments (E.g. Legal services, HRM): _____ x \$ _____ (hourly pay/fee).	<input type="checkbox"/> Costs legal proceedings \$ _____. <input type="checkbox"/> Fee lawyer(s) ____ hours x \$ _____, other costs (e.g. administration, travel expenses) \$ _____. <input type="checkbox"/> Fee experts/ assistants ____ hours x \$ _____, other costs \$ _____. <input type="checkbox"/> Slur on reputation, negative publicity \$ _____. <input type="checkbox"/> Negative impact on company relationships (estimation) € _____. <input type="checkbox"/> Negative impact on personal life of parties concerned (estimation) \$ _____. <input type="checkbox"/> Negative impact on quality output of parties concerned (estimation) \$ _____. <input type="checkbox"/> Additional costs (estimation) \$ _____. <input type="checkbox"/> Other costs (estimation) \$ _____. Time <input type="checkbox"/> Time involvement for resolving dispute for executives/managers: Person 1: hours spent on solving conflict ____ x \$ _____ (hourly pay/fee). Person 2: \$ _____ Person 3: \$ _____ Person 4: \$ _____. <input type="checkbox"/> Time involvement for resolving dispute by other departments (E.g. Legal services, HRM): _____ x \$ _____ (hourly pay/fee).		
Other potential future costs		Other potential future costs	
\$		\$	
<input type="checkbox"/> Costs for reaching agreement \$ _____ <input type="checkbox"/> Costs involved in reaching a partial agreement \$ _____ <input type="checkbox"/> Costs if no (partial) agreement \$ _____ <input type="checkbox"/> Cancellation/loss of projects/jobs \$ _____ <input type="checkbox"/> Loss of/ damage on important relationships \$ _____ <input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Costs for winning the lawsuit \$ _____ <input type="checkbox"/> Costs involved in winning/loosing partially (E.g. damages, negative publicity, etc.). \$ _____ <input type="checkbox"/> Costs for loosing the lawsuit (E.g. damages, negative publicity, etc.). \$ _____ <input type="checkbox"/> Cancellation/loss of projects/jobs \$ _____ <input type="checkbox"/> Loss of/ damage on important relationships \$ _____ <input type="checkbox"/> Other \$ _____		
TOTAL COSTS		TOTAL COSTS	



FORM BENEFITS OF THE DISPUTE

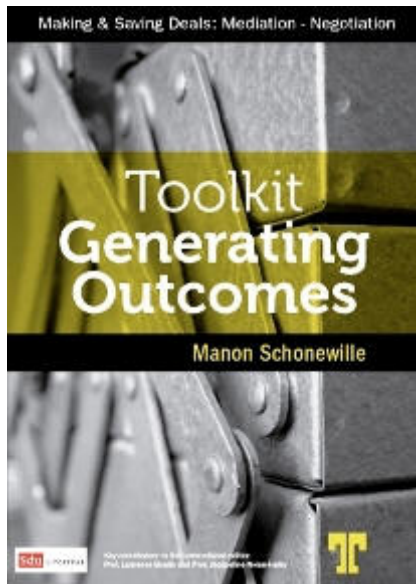
Mediation	Benefits	Litigation/arbitration	Benefits
Benefits of the dispute to date		Benefits of the dispute to date	
\$		\$	
<input type="checkbox"/> Extra revenue(s), projects, work \$ _____ (estimation). <input type="checkbox"/> Costs for the opposing party / competitors (E.g. legal aid, involving experts, media, management time, etc.) \$ _____ (estimation). <input type="checkbox"/> Reputation opposing party / competitors affected \$ _____ (estimation) <input type="checkbox"/> Time taken up from the opposing party / competitor \$ _____ (estimation). <input type="checkbox"/> Positive publicity, PR, create awareness, \$ _____ (estimation). <input type="checkbox"/> Other beneficial effects for the own company \$ _____ (estimation)		<input type="checkbox"/> Extra revenue(s), projects, work \$ _____ (estimation). <input type="checkbox"/> Costs for the opposing party / competitors (E.g. legal aid, involving experts, media, management time, etc.) \$ _____ (estimation). <input type="checkbox"/> Reputation opposing party / competitors affected \$ _____ (estimation) <input type="checkbox"/> Time taken up from the opposing party / competitor \$ _____ (estimation). <input type="checkbox"/> Positive publicity, PR, create awareness, \$ _____ (estimation). <input type="checkbox"/> Other beneficial effects for the own company \$ _____ (estimation)	
Benefits of resolving the dispute		Benefits of resolving the dispute	
\$		\$	
<input type="checkbox"/> Speed. <input type="checkbox"/> (Limited) costs that can be controlled by the parties. <input type="checkbox"/> Own (business) solution, not being bound by (limited) legal range of solutions. <input type="checkbox"/> High compliance rate. <input type="checkbox"/> Opportunity to settle things that are not legally enforceable (E.g. behavior, emotions and communication problems). <input type="checkbox"/> The real (underlying) interests can surface (in a caucus) and options can be explored in confidence <input type="checkbox"/> Confidentiality and privacy. <input type="checkbox"/> Maintaining a (workable) business relationship or cautiously end it. <input type="checkbox"/> Settlement agreement. <input type="checkbox"/> Settle several disputes at the same time. <input type="checkbox"/> Solve disputes with several parties in one procedure. <input type="checkbox"/> Other _____		<input type="checkbox"/> Public rehabilitation/publicly prove one' own right. <input type="checkbox"/> Delay settlement/dealing with consequences (utilize all available procedures). <input type="checkbox"/> Costs incurred to and time taken up from the opposing party / competitor. <input type="checkbox"/> Clear legal solution (win a case, loose a case, damages or not, explanation of (new) legislation or rules). <input type="checkbox"/> Third party who takes a binding decision. <input type="checkbox"/> Possible damages. <input type="checkbox"/> Unload the responsibility unto a third party (internal accountability towards constituency). <input type="checkbox"/> Implementation of acts that need a judicial order to be executed. <input type="checkbox"/> Precedent, leading case. <input type="checkbox"/> Publicity. <input type="checkbox"/> Enforceable title. <input type="checkbox"/> Other _____	
Potential future benefits		Potential future benefits	
\$		\$	
<input type="checkbox"/> Preservation or new start of business relationship. <input type="checkbox"/> New opportunities. <input type="checkbox"/> Potential revenues of business solution \$ _____ <input type="checkbox"/> Other _____		<input type="checkbox"/> Beneficial effects of winning a law suit. <input type="checkbox"/> Awarded damages \$ _____. <input type="checkbox"/> Precedent or leading case. <input type="checkbox"/> Other _____	

TOTAL BENEFITS

TOTAL BENEFITS



Toolkit Generating Outcomes



This Pocket Toolkit Mediation is an excerpt from Toolkit Generating Outcomes, a manual for how mediation can be used by various professionals for their own purposes. Managers, mediators, negotiators, trainers, coaches, consultants, lawyers, judges and other professionals can all benefit from using mediation techniques.

This practical handbook contains an overview of the treasure trove of tools a mediator has at his/her disposal and is written to offer a clear

guide on how to “technically” apply these tools. In particular, it includes comprehensive and easy-to-use practical checklists and overviews. Because of its focus on specific and practical knowhow this publication is suitable for both practitioners and scholars.

The full version is available in bookstores, see [Sdu](#) (€ 39,95), [management boek](#) & [Toolkit Company](#). A version without the unfolding cover is available at [Amazon](#) -with look inside (\$ 51)

The full **Pocket Toolkit Mediation for the Mediator**, as well as the **Pocket Toolkit Mediation Advocacy** are available for members of the **Toolkit Social Learning Environment**. See www.toolkitcompany.com

Dutch version:



Toolkit Mediation. Resultaat bereiken als manager, mediator en onderhandelaar, 3rd edition. Den Haag: Boom/Lemma, 2012. [Available in bookstores, see Bju](#) (€ 47,50) and [management boek.nl](#).



Toolkit Mediation Advocacy (in Dutch) also available in bookstores, see [Bju](#) (€ 53) and [management boek - with look inside](#) [feature list of contents and juridisch boek](#)

