

Check list: Legal consultation in ahead and during a mediation

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CenaCom® GmbH
Centre for applied conflict management
Officially recognised conciliation office
Kleinoberfeld 1, 76135 Karlsruhe, Germany
Telephone (free) +49 (0) 800-2362266 or +49 (0) 800-CENACOM
info@cenacom.com
http://www.cenacom.com

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- Solicitors shall undertake to demonstrate to their client the best possible approach to their conflict. They have to accompany the client with a view to shaping the law, avoiding conflicts and settling disputes, Par. 1 Sec. 3 Rules of Professional Practice. Conflicts and disputes are usually multi-layered and complex. We offer both judicial and extra-judicial procedures for ending a conflict. If a mediation procedure for a mutual (extra-judicial) end to conflict is chosen, then further aspects should be taken into account. The following check list presents a few directions - not conclusive - which can be taken into account before or during a mediation procedure.

		Fulfilled	Not fulfilled
Knowledge of the facts	1. Are the disputable and indisputable facts fully known? Which other factual information is missing? What do you want to learn from the opposition?	<input type="checkbox"/>	<input type="checkbox"/>
	2. Are the critical and important parts of the facts and background information known?	<input type="checkbox"/>	<input type="checkbox"/>
	3. Have the possible claims and basis for claims been worked out with reference to the facts given?	<input type="checkbox"/>	<input type="checkbox"/>
	Please note: This represents the individual, external framework in the opening phases of the mediation hearing.	<input type="checkbox"/>	<input type="checkbox"/>
	4. Have the individual, possible damages or claims for relief been made known in order to define the negotiation objective in the mediation?	<input type="checkbox"/>	<input type="checkbox"/>
	5. Have the possible counter claims and	<input type="checkbox"/>	<input type="checkbox"/>

basis for claims, means of defence (arguments, pleas) and liability risks (disputed and undisputed) been worked out?

Please note:

You should not be surprised by counter arguments submitted in the mediation.

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| 6. Are the relevant case law of the responsible court and legal literature known? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Has a litigation risk analysis been compiled in the run up to the mediation? | <input type="checkbox"/> | <input type="checkbox"/> |

Awareness of the best alternatives to a negotiated agreement (BATNA)

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| 1. Do you know the risks? Which alternatives are there if the negotiation should fail? | <input type="checkbox"/> | <input type="checkbox"/> |
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Please note:

You should understand and assess the non-agreement alternatives.

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| 2. Have you calculated the litigation cost risk and estimated the litigation duration? | <input type="checkbox"/> | <input type="checkbox"/> |
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Please note:

You should make this calculation in consideration of a possible litigation outcome.

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| 3. Have you assessed the probable litigation outcome? | <input type="checkbox"/> | <input type="checkbox"/> |
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Please note:

Creating a litigation risk analysis makes it possible to assess the litigation risk with numbers and put into perspective any individual over-optimism.

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| 4. What does the client want? What other options are there to end the conflict? What other options does the client have? | <input type="checkbox"/> | <input type="checkbox"/> |
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Preparing the client for the mediation procedure

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| 1. Are the mediation procedure process and phases known to the client? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Have the roles between legal advisor and client during the mediation procedure been defined and allocated in advance? | <input type="checkbox"/> | <input type="checkbox"/> |

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| 3. | Are the legal opportunities and risks known to the client before the mediation procedure? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | Are the legal limits of his possible claims known the client? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Is the client aware of the latest status of communication with the other side?
Has the conflict been assigned to an escalation stage? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | Have goals that should be achieved in the mediation procedure been discussed with the client? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. | Have acceptable solution variants been identified in case the expected goals are not achieved in the mediation procedure? | <input type="checkbox"/> | <input type="checkbox"/> |

Selecting the mediator(s)

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| 1. | Are the mediator's qualifications and basic education known? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Does/do the mediator(s) have specific professional qualifications? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Does/do the mediator(s) have sector knowledge? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | Does/do the mediator(s) have appropriate mediation experience? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Are the fees/mediation procedure costs known to the client(s)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | Have all parties agreed on one or more mediator(s)? | <input type="checkbox"/> | <input type="checkbox"/> |
