

Kluwer Mediation Blog

Mediation Suitability Checklist

Rick Weiler (Weiler ADR Inc.) · Sunday, April 22nd, 2012

Some disputes are more suitable for mediation than others. Counsel and their clients contemplating whether or not to mediate a particular dispute can sometimes benefit from a more structured approach to analyzing that question.

It was with this in mind that many years ago my then partner and I designed the [Mediation Suitability Checklist](#). The Checklist consists of seven statements and asks the decision maker to rank each statement on a scale from “strongly disagree” to “strongly agree”. The statements were drawn from early research in the field of mediation indicating which factors seemed to predict a higher likelihood of success in mediation.

Here are the Checklist instructions and the seven statements and I encourage you to give it a try for any dispute with which you may currently be involved.

Instructions: *For each of the following statements circle the number which most closely corresponds to your reaction. Total the circled numbers. Disputes generating a score of 21 or greater should be considered prime candidates to refer to mediation. 1 = strongly disagree; 2 = disagree; 3 = no opinion; 4 = agree; 5 = strongly agree*

1. Parties have a history of cooperation and successful problem solving.

1 2 3 4 5

2. The number of parties to this dispute is limited (i.e. four or less)

1 2 3 4 5

3. Issues in dispute are not overwhelming in number and we have been able to agree on some issues:

1 2 3 4 5

4. The hostility of both sides to this dispute is moderate or low

1 2 3 4 5

5. The parties desire for settlement is high

1 2 3 4 5

6. There is external pressure to settle (time, money, unpredictable outcomes, etc.)

1 2 3 4 5

7. There is a possibility of an ongoing relationship among the parties.

1 2 3 4 5

Total Score:

The use of such a checklist is not to suggest that other disputes are not suitable for mediation. Indeed, any commercial mediator would say it is the rare dispute that would not benefit from mediation. You will note that if someone filled out the Checklist above by answering each of the seven questions with a “no opinion” response the score would be 21 and therefore the default would be to consider mediation.

This can also be a useful marketing tool for mediators in jurisdictions where commercial mediation is relatively new. Lawyers, insurance representatives, government decision makers, corporate executives and others unfamiliar with mediation can find this a helpful guide to both make and justify a decision to refer a particular dispute to mediation.

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