

# Kluwer Mediation Blog

## Mediation vs Litigation: The Advantages of Settling Out of Court

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### Introduction

If you find yourself in the midst of a legal dispute, you might feel confident that taking the matter to court is the best option, **especially when you have a strong case**. After all, who wouldn't want to see justice served swiftly and decisively? And why show any vulnerability when holding all the cards? However, before you proceed with a lawsuit, **it's essential to consider alternative dispute resolution methods such as mediation**. In fact, **statistics show that nearly 70-80% of mediated cases result in a settlement**, highlighting the effectiveness of this approach. These are cases where a settlement was not achieved before the mediation.

You might be surprised to learn that mediation offers many advantages, even when your case appears unbeatable. For example, a dispute between [Apple and Samsung](#) was successfully settled in 2012, and the outcome was favourable for both parties. These real-life examples demonstrate the potential benefits of embracing mediation, even in complex and contentious legal disputes.

In this blog, we'll explore why mediation makes sense for legal cases, simple or complex, and how it can help maximize outcomes for both parties. By understanding the various practical benefits of mediation, such as cost savings, time efficiency, and potential for relationship preservation, you can make a much more informed decision about the best course of action for your particular situation. After all, reaching the best possible solution is better than any other solution, including winning or a weak settlement.

### Why mediate, especially when you have a strong case?

#### 1. Cost-Effectiveness and Time Efficiency

As Benjamin Franklin wrote in his essay "Advice to a Young Tradesman," time is money – a principle that holds true when it comes to legal disputes. Legal proceedings can be expensive and time-consuming. The costs can quickly add up between court fees, expert fees, and the time spent in litigation. Mediation, on the other hand, is typically much more cost-effective, as it often involves fewer meetings and requires less time. By opting for mediation, you can resolve the dispute more efficiently and save considerable money.

Mediation is typically faster than both litigation and arbitration, as it focuses on a collaborative

approach where both parties work together to resolve the dispute. Unless it is a very complex dispute with multiple parties and issues, the mediation sessions can last anywhere from a few hours to a few days, and most disputes are resolved within a single session.

On the other hand, litigation is generally the slowest method of dispute resolution. There are various processes involved in litigation, including filing a lawsuit, the entire discovery process, and going to court for a trial. These processes can take a long time, from several months to even several years, mainly depending on the case's complexity, the busyness of the courts, and, more importantly, the parties' convenience. Similarly, arbitration is often faster than litigation but may still take longer than mediation. The process usually involves a panel of one or three arbitrators who listen to both parties and make a binding decision. The time frame for arbitration varies greatly depending on the complexity of the case and the availability of the arbitrators, but it typically takes several months to over a year.

**Please note that these time frames are general approximations and can vary depending on factors such as jurisdiction, the specific dispute, and the parties involved. In comparison, a 70-80% chance to settle within days, and move on is certainly an option to be considered.**

## 2. Collecting Your Hard-Earned Money: A Challenging Reality

Even when a judge rules in your favor, there is no guarantee that you will receive the money owed to you promptly – if ever. Winning a judgment is just the first step in the process; enforcing it and actually collecting the funds can be an entirely different challenge. **Are you prepared to take on this risk and potentially face further frustration after investing significant time, effort, and resources into the legal dispute?**

It's important to consider whether the defendant may be unable or unwilling to pay the awarded sum, even after a court ruling. Sometimes, they may attempt to hide assets, declare bankruptcy, or ignore the judgment. This could lead to additional legal battles and enforcement efforts, prolonging the process and increasing expenses.

On the other side, mediation settlement agreements are implemented voluntarily in the vast majority of cases. The reason for this is simple. They are based on the parties' willingness and usually include the timelines, terms, conditions, safeguards and guarantees agreed upon and considered necessary by the parties. By recognizing the potential challenges and weighing them against the advantages of mediation, you can make a more informed decision about the best path forward for your specific situation.

## 3. Reduced Stress and Emotional Toll

The adversarial nature of litigation can be incredibly stressful for everyone involved. With its more collaborative and solution-focused approach, mediation often reduces the emotional toll on both parties. By choosing mediation, you can maintain a more balanced and less stressful atmosphere, leading to more productive discussions and a better overall experience. Furthermore, mediation allows the parties to meet separately with the mediator when joint meetings are not productive anymore, and the tension rises. This creates an environment where the emotional costs of conflict, often hidden and considered by parties when it is too late, are minimized to the extent that parties appreciate the process and the chance to have a "different" conversation in the presence of a professional mediator.

## 4. Preserving Relationships

Legal disputes can be emotionally draining and may strain or even sever relationships between the parties involved. Litigation brings conflicts to a resolution, a legal binding solution, but does not end them. The impact on the relationship between the parties is generally negative, given all the public blame and shame. Mediation, by contrast, fosters open communication and collaboration, making it possible to resolve disagreements while preserving relationships. This is especially important when the disputing parties have ongoing personal or business connections. By working together to find a resolution, all parties can walk away with a sense of closure and the potential for a more positive relationship moving forward.

For instance, consider the case of divorce mediation. This process can be particularly helpful and beneficial for families when resolving emotional and familial conflict, as it can decrease the negative effects that divorce may have on children and other family members. By engaging in mediation, divorcing couples can communicate openly and work together to find a solution that best serves their family's needs, ultimately leading to a healthier post-divorce dynamic.

Similarly, imagine two business partners facing a disagreement over profit allocation, threatening their long-standing friendship and partnership. By opting for mediation instead of going to court, they can express their concerns, understand each other's perspectives, and find a compromise. Through this collaborative process, they not only resolve their financial dispute but also address underlying communication issues, ultimately preserving and strengthening their personal and business relationship for the future. In both cases, mediation proves to be a valuable tool for maintaining and nurturing relationships during difficult times.

## 5. Confidentiality and Privacy

Court proceedings are public, meaning that sensitive information may become a matter of public record. This can be damaging to both parties' reputations and may lead to unwanted publicity. Mediation, on the other hand, is private and confidential. The discussions and agreements made during mediation are private, allowing you to protect your reputation and maintain your privacy. Confidentiality is generally formalized, and parties usually sign an agreement to mediate, including provisions that create the "safe space" necessary for open and honest communications. This space allows parties to disclose information without being concerned that what is shared will be used against them in subsequent proceedings.

For instance, consider a case where a high-profile company is involved in a legal dispute with a former employee over allegations of unfair dismissal. If this case goes to court, details of the dispute could become public knowledge, leading to negative publicity and a potential loss of trust from investors, customers, and other stakeholders. This loss of trust could ultimately impact the company's bottom line, as customers may choose to take their business elsewhere, and investors might reconsider their investments.

In another example, two business partners embroiled in a contentious disagreement over intellectual property rights could face severe reputational damage if their dispute is aired publicly in court. This could lead to losing credibility within their industry, making it difficult to form future partnerships or attract new clients.

By choosing mediation, these parties can work through their disagreements in a confidential setting, allowing them to address sensitive issues without the risk of public exposure. This can help

preserve their reputations, protect their relationships with stakeholders, and ultimately safeguard their businesses' bottom lines.

## 6. Control Over the Resolution

When you take a case to court, you put the outcome in the hands of a judge or jury. In mediation, however, both parties have an opportunity to negotiate and reach an agreement that suits their needs. This collaborative approach allows for creative solutions that may not be possible in a courtroom setting. You can tailor the outcome to address the specific issues at hand, leading to a resolution that better satisfies both parties. A Romanian saying is, "*An unfair settlement is better than a fair judgement.*". This saying goes back to the parties' control over both the mediation process and its outcomes. Not only is any party free to walk away from mediation at any time, but that freedom is extended over any procedural or substantive aspect, including the resolution. This is a great strategy for managing the risk of losing.

## 7. Higher Compliance Rates

Since both parties have a hand in crafting the resolution during mediation, there is often a higher rate of compliance with the agreed-upon terms. When a judge imposes a decision, one party may feel resentful or dissatisfied, leading to non-compliance or further disputes. Mediation can increase the likelihood of a lasting resolution that both parties willingly adhere to. This is highly related to the needed procedural satisfaction for voluntary implementation of the mediation settlement agreement. Values like respect, dignity, fairness and humanity are central and lead to high compliance rates.

## Conclusion

While relying on the legal system as the primary dispute resolution approach to resolve a dispute may be tempting, especially when you have a strong case, mediation offers numerous benefits that make it a compelling alternative. Mediation can lead to more satisfying outcomes for everyone involved, from cost savings and time efficiency to preserving relationships and maintaining privacy.

If you find yourself in a legal dispute with a seemingly strong case, and direct communications and negotiations don't seem to work, take a moment to consider the advantages of mediation before proceeding with a lawsuit. By opting for this collaborative approach, you can maximize outcomes, save time and money, and maintain control over the resolution. By keeping an open mind and embracing the benefits of mediation, you may find that it not only leads to a more satisfying resolution, but also fosters a better understanding between parties and paves the way for a more positive future. In the end, mediation has the potential to transform a seemingly daunting legal conflict into a constructive and mutually beneficial experience. So, before diving headfirst into litigation, give mediation the consideration it deserves – you might be pleasantly surprised by the results. And if it doesn't work, litigation will still be there as a natural next step. But remember, it does work in 70-80% of the cases, and this is not a percentage to be ignored.


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