



UNIVERSAL DISCLOSURE PROTOCOL FOR MEDIATION (UDPM) of Manon Schonewille

Manon Schonewille is an endorser of the Universal Disclosure Protocol for Mediation (UDPM). The purpose of the UDPM is to provide parties with information about the mediator's approach and what they may expect when engaging in mediation with this mediator. This promotes transparency, process enlightenment and informed self-determination by helping parties understand how this mediator approaches mediation in practice.

Across cultures and legal systems, mediation is practised in many different ways. While mediation styles may vary considerably, party self-determination – the right and ability of parties to make informed choices regarding both process and outcome – is one of the most widely recognised principles of mediation. Any mediation style may be effective in the appropriate circumstances; however, a lack of clarity regarding the mediator's approach may undermine the parties' ability to make informed decisions about the process.



I. Conflict of Interest and Prior Relationships

The mediator reviews each matter for potential conflicts of interest and discusses any relevant prior relationships as part of the intake process.

The mediator believes that transparency supports informed self-determination. Accordingly, the mediator will disclose any prior professional involvement that one or more parties may reasonably consider relevant.

Examples include:

- previous mediations involving one or more of the parties;
- previous professional assignments for one or more of the parties;
- previous professional relationships with legal counsel involved in the matter;
- prior co-mediation, training, board, committee or professional activities involving participants in the mediation.

The mediator does not generally regard prior professional contact with legal counsel, experts or other mediation professionals as constituting a conflict of interest. In many specialist areas of practice, mediators, lawyers and other professionals regularly work together on different matters. However, prior involvement with one or more of the parties may, depending on the circumstances, require further discussion and the informed consent of all parties before the mediation proceeds. Where the mediator concludes that a prior relationship does not affect independence, impartiality or neutrality, the mediator will explain this and invite the parties to raise any concerns before deciding whether to proceed.

II. General Process

- The mediator determines, in consultation with the parties, how the mediation process will be conducted. Manon Schonewille follows a "process first" approach to mediation.
- The mediation process therefore starts with an individual intake meeting of approximately one to two hours with each party. During these meetings, expectations, preferences, prior agreements regarding the mediation process, and the mediator's general approach are discussed. Practical matters such as participation, venue, language, co-mediation, use of technology and process design options are also explored. Following the intake meetings, the mediator proposes an appropriate mediation process.



- Where legal counsel are involved, they are welcome to participate in the mediation process and attend mediation meetings if the parties agree. Counsel participating in the mediation are required to co-sign the mediation agreement. Where counsel act solely as advisers in the background, they may be requested to sign a confidentiality declaration before receiving confidential information.
- Private meetings (caucuses) between the mediator and individual parties may form a regular part of the mediation process. These meetings provide an opportunity to confidentially explore options, discuss sensitive matters, address emotions, or discuss issues relevant to achieving resolution.
- The mediator may hold separate meetings with parties, legal counsel, experts or other participants where this is considered useful for the process.
- The mediation commences upon signature of the mediation agreement by the parties and the mediator.
- Dutch law applies to the mediation agreement and the mediation process.
- Unless otherwise agreed in writing, positions, proposals and discussions during the mediation are non-binding and may be explored freely without prejudice. This allows parties to brainstorm, test options and consider proposals without commitment.
- Mediation is voluntary. The parties and the mediator are free to conclude the mediation in accordance with the mediation agreement.
- If the parties so wish, the mediator may assist them in identifying and appointing another mediator.
- Following the conclusion of the mediation, the mediator provides a neutrally worded notice of conclusion stating the commencement and conclusion dates of the mediation. Unless otherwise agreed in writing, this notice is excluded from the confidentiality obligations in order to enable parties to demonstrate that mediation was attempted.

III. Role of the Mediator and Parties

- Participants can expect a proactive mediation style. The mediator facilitates discussions concerning relationships, process and substantive issues, actively supports brainstorming, suggests possible routes to resolution and, where appropriate, provides clear process direction.
- At the request of the parties, the mediator may assist with process design choices and may suggest involving a substantive or legal expert to provide a binding or non-binding assessment. The mediator may also provide a mediator's proposal. Any such proposal is non-binding and intended solely to support further discussion and resolution.
- The mediator is responsible for the process; the parties are responsible for the substance of the dispute and any agreements reached; and legal counsel are responsible for legal advice and act as sparring partners to their clients.
- Party autonomy and self-determination are the overriding principles.
- The mediation may be conducted in English, Dutch or German. Other languages may be accommodated with the assistance of an interpreter or co-mediator.
- The mediator is bound by the IMI Code of Professional Conduct and the Dutch MfN Code of Conduct for Mediators. Copies are available upon request.
- If the parties or one of the parties believe that the standards established in the MfN Code of Conduct have not been met, the mediator is subject to the disciplinary procedures of Stichting Tuchtrect Mediators.



- If the parties or one of the parties believe that the standards established in the IMI Code of Professional Conduct have not been met, they may initiate the IMI Professional Conduct Assessment Process.
- Parties are expected to participate constructively in the mediation process, including listening to one another, exploring mutually acceptable solutions, refraining from conduct that may undermine the mediation, and providing complete and accurate information to one another and to the mediator.
- If a party initiates judicial or other proceedings during the mediation, that party should inform both the mediator and the other party.

IV. Record Keeping and Administration

- Unless otherwise agreed, the mediator may provide brief written summaries of:
 - interests, concerns, needs and motivations identified;
 - progress and decisions made;
 - agreed next steps; and
 - preparations for subsequent meetings.
- Unless otherwise agreed, the mediator does not prepare detailed minutes of mediation meetings.
- Mediation documents are treated confidentially. Except where required for professional registration, peer review, certification, accounting, tax, insurance or legal compliance purposes, the mediator does not disclose mediation documents to third parties.
- The mediator's accountant and administrative service providers may have access to invoices and related financial records in the normal course of administration. Invoices may contain the names of the parties and a description of the services provided.
- Financial records may be disclosed to tax authorities or other public authorities where required by law.
- The mediator's administrative service provider has signed a confidentiality agreement.
- Any professional reviewers, certification assessors, administrative service providers or other third parties receiving information under this section are subject to confidentiality obligations where applicable.

V. Confidentiality

- Effective mediation requires that parties can communicate openly and exchange information freely. The confidentiality obligations applicable to the mediation are set out in detail in the mediation agreement.
- In general, information exchanged during the mediation, positions taken and proposals made are confidential and may not be used as evidence in legal or other proceedings, except as provided by law or by the mediation agreement.
- Information shared by a party and/or its adviser during a private meeting (caucus) is confidential and will not be disclosed by the mediator to another party unless expressly authorised.
- The confidentiality obligations do not apply where:
 - a. there is a statutory right or obligation to report criminal conduct;
 - b. there is information concerning the threat of a crime;
 - c. confidentiality must be waived in connection with complaints, disciplinary proceedings or liability proceedings involving the mediator, to the extent

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MEDIATOR | NEGOTIATOR

reasonably necessary for the mediator's defence or professional liability insurance;
or

- d. with respect to the notice of conclusion referred to above, unless otherwise agreed in writing.

VI. Privacy and GDPR

Personal data is processed in accordance with applicable GDPR legislation and the mediator's privacy statement, which is available upon request or via the website.

VII. Signatory of the Mediators' Green Pledge

As a signatory to the Mediators' Green Pledge, the mediator seeks to minimise the environmental impact of each mediation. This includes encouraging the appropriate use of technology, reducing unnecessary travel, limiting paper use, considering environmentally responsible venues and promoting sustainable working practices where appropriate.

