

THE MEDIATION MAP

— CPD FIELD GUIDE —

*A practical roadmap for
successful mediation*



ZOË DURAND

MEDIATION ANSWERS

mediationanswers.com.au

THE MEDIATION MAP

A practical roadmap for successful mediation.



One-hour complimentary CPD available at your firm

Zoë Durand

zoe@mediationanswers.com.au

STAGE 01 — PREPARATION

Know the *people*, not just the case.

Prepare for the people in the room,
not just the case on the page.



YOUR CLIENT

What *matters* to them?
What are they *worried* about?
What might *help* them move?



THE OTHER PARTY

What *matters* to them?
What are they *worried* about?
What might *help* them move?



THE OTHER LAWYER

What are they trying to *manage*?
How do they tend to *negotiate*?
What might *help* them move
the matter?

What am I assuming?

Issues → Options

Separate the problem from the possible solutions.

List each issue that needs to be resolved.

Then explore as many workable options as you can think of.

Keep an open mind. There is usually more than one way.



Curiosity creates options.

Options create choice.

Choice creates outcomes.

MARK YOUR FLEXIBILITY

HOLD

Little room to move.

PREFERENCE

Important, with some room.

FLEXIBLE

More than one outcome could work.

LOOK FOR THE UNLOCK

What matters most to you may matter less to them — and vice versa.

If everything is a hold, there is nowhere to negotiate.

01 ISSUE

What actually needs to be resolved?

FLEXIBILITY



POSSIBLE OPTIONS

Don't evaluate yet. Generate first.

WHAT MIGHT MAKE THIS WORKABLE?

02 ISSUE

What actually needs to be resolved?

FLEXIBILITY



POSSIBLE OPTIONS

Don't evaluate yet. Generate first.

WHAT MIGHT MAKE THIS WORKABLE?

03 ISSUE

What actually needs to be resolved?

FLEXIBILITY



POSSIBLE OPTIONS

Don't evaluate yet. Generate first.

WHAT MIGHT MAKE THIS WORKABLE?

04 ISSUE

What actually needs to be resolved?

FLEXIBILITY



POSSIBLE OPTIONS

Don't evaluate yet. Generate first.

WHAT MIGHT MAKE THIS WORKABLE?

HOLD
Protect.

PREFERENCE
Explore.

FLEXIBLE
Unlock.

*Don't negotiate every problem at once.
Isolate the issue. Expand the options. Then test what could work.*

STAGE 02 — AWARENESS

Read the Room.

*Your preparation gives you a map.
The room tells you where you actually are.*

TEMPERATURE

What is the emotional temperature?

Calm • anxious • frustrated •
overwhelmed • ready

MOVEMENT

What is happening to the negotiation?

Moving • static • retreating • circling

NEED

What does this negotiation need next?

Information • an offer • a calculation • a reframe •
a break • a conversation • the mediator • silence

What does this room need from me now?

STAGE 03 — ARCHITECTURE

Anatomy of an Offer.

WHAT DO YOU WANT
THIS OFFER TO DO?

*Why would they want
to accept it?*

*How to structure successful
opening, closing (and everything
in between) offers.*

TIMING

*Why this offer,
at this point in
the negotiation?*

STRUCTURE

*Is there another way
to construct the
outcome?*

NUMBER

*What is the
actual proposal?*

MESSAGE

*What does the offer
communicate — and
why might they say yes?*

MOVEMENT

*What movement
are we making?*

EXCHANGE

*What are we
seeking in return?*

NEXT MOVE

*Where does this offer
allow the negotiation
to go?*

Advocate for your client.
Make the offer make sense to the other side.

The Offers Library.

Ten strategic ways to move the negotiation.

02 —

Credible Range Offer

Realism

Movement into a range that can be justified against realistic outcomes.

06 —

Silence-Test Offer

Restraint

Make the offer.
Let it land.
Resist negotiating against yourself.

09 —

Issue-Isolation Offer

Focus

Resolve one issue completely to unlock movement elsewhere.

03 —

Bridging Offer

Movement

A deliberate move designed to narrow the gap and invite reciprocal movement.

07 —

Fatigue Close

Timing

A clean, implementable offer when the day is long and the appetite for uncertainty is falling.

08 —

Reality-Check Offer

Perspective

Frame the offer against realistic alternatives — including litigation risk, delay and cost.

10 —

Trade-Off Offer

Value

Exchange value across issues rather than simply splitting every difference.

01 —

Strategic Anchor

Position

A firm but defensible opening position that establishes the negotiation range.

04 —

Two-Door Offer

Choice

Two workable alternatives.
Choice rather than a wall.

05 —

Conditional Offer

Exchange

Movement tied expressly to movement, agreement or value elsewhere.



EVERY OFFER SHOULD HAVE A PURPOSE.

Choose the offer for the moment.

STAGE 03 — ARCHITECTURE

Before you make the offer.

THE OFFER QUALITY CHECK

An offer should have a purpose before it has a number.

01
PURPOSE

What is this offer designed to do?

- Open the negotiation?
- Test something?
- Create movement?
- Signal compromise?
- Exchange value?
- Close the gap?
- Land the settlement?

.....

.....

.....

.....

.....

.....

.....

02
CONSTRUCTION

How is this offer constructed?

- What are we asking for?
- What are we giving?
- Could structure change instead of number?
- What does this offer communicate?
- Why might the other side say yes?

.....

.....

.....

.....

.....

03
TRAJECTORY

Where does this offer take the negotiation?

- What movement are we making?
- What movement are we seeking in return?
- Where does this leave us if they say no?
- Does this offer give the negotiation somewhere to go?

.....

.....

.....

.....

.....



If you received this offer, how would you hear it?

Map the Fortnight.

PARENTING ARRANGEMENTS • CUT + KEEP

Don't just count the nights. See the pattern.

Use the space below to map proposed parenting arrangements across a 14-day fortnight.



Children experience time in *patterns*, not percentages. Mapping the fortnight helps you see the rhythm behind the words.

ARRANGEMENT

1

Describe this arrangement:

WEEK ONE	M	T	W	T	F	S	S
WEEK TWO	M	T	W	T	F	S	S

ARRANGEMENT

2

Describe this arrangement:

WEEK ONE	M	T	W	T	F	S	S
WEEK TWO	M	T	W	T	F	S	S

ARRANGEMENT

3

Describe this arrangement:

WEEK ONE	M	T	W	T	F	S	S
WEEK TWO	M	T	W	T	F	S	S

NOTES + OBSERVATIONS

Offer Tracker

Track the movement. Not just the numbers.

Record each offer, what changed,
and what the movement may be telling you.

01 OFFER

PARTY / SIDE: _____

OFFER: _____

What changed? _____

What stayed fixed? _____

Movement:

number • structure

timing • issue • condition

02 OFFER

PARTY / SIDE: _____

OFFER: _____

What changed? _____

What stayed fixed? _____

03 OFFER

PARTY / SIDE: _____

OFFER: _____

What changed? _____

What stayed fixed? _____

Movement:

number • structure

timing • issue • condition

04 OFFER

PARTY / SIDE: _____

OFFER: _____

What changed? _____

What stayed fixed? _____

05 OFFER

PARTY / SIDE: _____

OFFER: _____

What changed? _____

What stayed fixed? _____

Movement:

number • structure

timing • issue • condition

06 OFFER

PARTY / SIDE: _____

OFFER: _____

What changed? _____

What stayed fixed? _____

READ THE PATTERN

Where is the movement?

Where is there no movement?

*What might the next offer
need to do differently?*

Offers are information.
Read the pattern before making the next one.

STAGE 04 — ENERGY

Create Momentum.

*Small movement
creates bigger movement.*

FIND MOVEMENT

*Where is movement
already happening?*

A concern acknowledged.

A question answered.

Information shared.

An issue narrowed.

An agreement reached.

A perspective shifted.

CREATE MOVEMENT

*What is the smallest
useful next step?*

Test something.

Change the structure.

Make a different offer.

Seek a reply.

Ask a different question.

Focus on one piece.

BUILD ON MOVEMENT

*How can one agreement
make the next
one easier?*

Link agreements
together.

Create options.

Open up possibilities.

Keep building.

Don't mistake activity for momentum.

*When the whole problem cannot move,
move a piece of it.*

01 —

Change
the offer.

*Number · structure ·
timing · conditions.*

02 —

Change
the issue.

*Park what is stuck.
Move somewhere else.*

03 —

Find the
small win.

*Agreement breeds
agreement.*

04 —

Offer
two doors.

*Create choice
rather than a wall.*

The room
isn't moving.

Change something.

05 —

Change the
messenger.

*Let the mediator test,
reframe or carry
the message.*

06 —

Change
the question.

*From "Who is right?"
to "What would make
this workable?"*

07 —

Reality-test
the alternative.

*Compare what is on the table
today with the best and worst
day at court — less the cost
of getting there.*

08 —

Use time
differently.

*Pause. Caucus.
Let an offer land.
Know when fatigue
changes the room.*

09 —

Isolate one issue.

*Resolve it completely.
Reduce the field
of conflict.*

10 —

Reframe
the problem.

*For parenting especially:
move from blame and
position to what the
child needs next.*

Impasse is information.

Read what the room is telling you.

WHAT'S ON THE TABLE — AND WHAT'S BEYOND THE DOOR?

REALITY-TEST THE OFFER TODAY AGAINST THE RANGE OF POSSIBLE OUTCOMES AT TRIAL.

SETTLEMENT TODAY

My last offer
\$ _____

Their last offer
\$ _____

What is the actual gap?
\$ _____

IF THIS GOES TO TRIAL

BEST POSSIBLE DAY
Potential outcome at trial \$ _____
minus estimated legal fees - \$ _____
NET POSITION \$ _____

WORST POSSIBLE DAY
Potential outcome at trial \$ _____
minus estimated legal fees - \$ _____
NET POSITION \$ _____



*Settle today —
or go through the door?*

Compare what is on the table today with the reality of trial.

BEST DAY. WORST DAY. LESS THE COST OF GETTING THERE.

What do you notice? _____

STAGE 05 — PERSPECTIVE

Break Impasse.

THE NUMBER

*Is the distance
simply too great?*

HERE.

THE INFORMATION

*Is something missing,
disputed or not yet
understood?*

*Deadlock is
information,
not failure.*

THE STRUCTURE

*Are we trying to solve
the problem in the
wrong way?*

THE NEED

*What has not yet
been heard, recognised
or addressed?*

*Before you try to close the gap,
understand what created it.*

Bridge the Gap.

Different gaps need different bridges.

REFRAME

Change the question.

Not “Who is right?”
But “What would need to happen for this to become workable?”

NARROW

Move a piece of the problem.

Isolate one issue ·
resolve what you can ·
park what you can't ·
reduce five disputes to three.

*If this isn't moving —
what could you change?*

the question

the structure

the issue

the comparison

the messenger

RESTRUCTURE

Change the shape of the solution.

Do you disagree about the outcome — or the path to it?

Timing · stages · asset mix ·
payment structure ·
conditions · sequence

REALITY-TEST

Change the comparison.

Court risk · time · cost ·
evidence · uncertainty

Compare the gap with the cost of continuing.

CHANGE THE VOICE

Change the messenger or the medium.

From the mediator ·
as a question · privately ·
after a break ·
after being heard

*Don't push harder on the same door.
Find another way through.*

STAGE 05 — DIAGNOSIS

Why is there a gap?

The stated gap may not be the real gap.



LAW

- What outcome does each side believe the law supports?
- Are the parties receiving different advice?
- How are contributions, needs, risk and evidence assessed?



LIFE

- What does each side need to live with the outcome?
- What really matters outside the legal analysis?
- What are they afraid will happen if they agree?



LEGAL FEES

- What will it cost to keep fighting about the difference?

Is the gap between the parties less than — or close to — their combined future legal fees?

- Could identifying that turn the cost of litigation into settlement movement?

Sometimes the legal fees are the gap.

GAP BETWEEN
PARTIES



COMBINED FUTURE
LEGAL FEES



How far apart are they?

You cannot bridge a gap you have misdiagnosed.



IN THIS MATTER, WHERE IS THE REAL GAP?



Sometimes the way through
is not another argument.
It is another voice.

ZOË DURAND

Work with the Mediator.

Use the process strategically. Not passively.

The mediator is not
just a messenger.

TEST

*Test an idea before
it becomes an offer.*

Could the mediator
test a structure or
reaction?

*Think about what the mediator
can do that you cannot.*

REFRAME

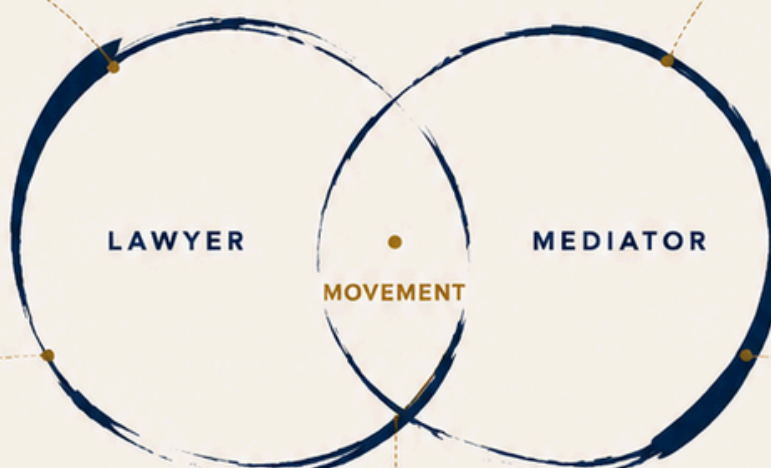
*Let the mediator say
it differently.*

A neutral voice can
land where others
cannot.

REALITY-TEST

*Not only the other room.
Your room too.*

Use the mediator to
reality-test your client's
position and assumptions.



CHANGE THE PROCESS

*Change the pace, sequence, room,
question or messenger.*

A different process can create
a different outcome.

REVEAL

*Give the mediator what
they need to understand
the room.*

What does the mediator
need to know — and
what can they use?

*What does the mediator know
that I don't?*

*What can the mediator do
that I can't?*

Land the Settlement.

*Help parties reach an outcome
they can live with **tomorrow**.*

Slow down at the moment
everyone wants to speed up.



A settlement is not landed
when everyone says yes.
It is landed when everyone
knows what **yes** means.

CLARIFY

*What exactly
has been agreed?*

Terms • details •
conditions

TEST

*Does everyone
understand the
same deal?*

Does it mean the
same thing in
both rooms?

MAKE IT WORK

*How will this
actually work?*

Who • what • when •
in what order

CAPTURE IT

Record it clearly.

Don't leave
ambiguity behind.

*What could unravel
this **tomorrow**?*

Clarify it now.

THE MEDIATION MAP

•

Mediation rarely moves in a straight line.

*The skill is knowing what to do
when it doesn't.*

ZOË DURAND • MEDIATION ANSWERS

mediationanswers.com.au



ZOË DURAND

FAMILY LAWYER • FDRP • MEDIATOR • AUTHOR

Zoë Durand is a Sydney family lawyer, FDRP and nationally accredited mediator with 20 years' experience, principally in family law.

She began her career with national and international commercial law firms, including K&L Gates and HWLE, before moving into family law private practice and working as a Court-appointed Independent Children's Lawyer with Legal Aid.

Zoë is the author and host of *Inside Family Law* (book and podcast), founder of the Inside Family Law Awards, and has edited chapters in the current and last three editions of CCH's *Master Family Law Guide*. She has guest lectured at UNSW and reported from leading family law conferences including AFCC, Pacifica Congress and FLENA.

She is the founder and principal of **Mediation Answers**, where she mediates parenting, property and financial matters.



MEDIATION ANSWERS
Family Law Mediation
