

## **Know Your Rights: How Mediation Works in South Africa**

**Prepared by RW KRUGER AND ASSOCIATES INC**

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(Public Legal Education Guide)

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### **ZA 1. What Is Mediation?**

Mediation is a voluntary, confidential, and structured dispute-resolution process in which an independent and neutral third party (the mediator) assists disputing parties to resolve their dispute by agreement.

Unlike litigation, mediation:

- Is not adversarial
- Does not involve a judge imposing a decision
- Focuses on practical, mutually acceptable solutions
- Preserves relationships where possible

Mediation is recognised and encouraged in South African law as an effective form of Alternative Dispute Resolution (ADR).

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### **2. Legal Foundations of Mediation in South Africa**

Mediation is supported by:

- The Constitution of the Republic of South Africa, 1996 (Section 34 – access to justice)
- Uniform Rules of Court (judicial encouragement of settlement)
- Magistrates' Courts Rules (court-annexed mediation)
- Family law statutes (Children's Act, Divorce Act)
- Labour Relations Act (CCMA mediation)
- Common-law principles of contract and compromise

Courts increasingly expect parties to attempt mediation before proceeding to trial.

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### **3. Key Role Players in Mediation**

Role Function

Mediator Neutral facilitator who assists parties to reach agreement

Parties Individuals or entities involved in the dispute

Attorneys Advise clients, protect legal rights, draft settlement terms

Experts (if needed) Provide technical or specialist input

The mediator does not give legal advice, take sides, or impose outcomes.

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## 4. When Is Mediation Appropriate?

Mediation is suitable for most civil disputes, including:

- Contractual disputes
- Debt and payment arrangements
- Commercial and shareholder disputes
- Property and neighbour disputes
- Family law matters (divorce, maintenance, parenting plans)
- Employment and workplace conflicts
- Consumer disputes

Mediation may be voluntary, contractually required, or court-directed.

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## 5. The Mediation Process — Step by Step

Step 1: Agreement to Mediate

- Parties agree voluntarily or are referred by court or contract.
  - A mediator is appointed by agreement or through an accredited body.
  - A mediation agreement is signed, confirming confidentiality and neutrality.
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Step 2: Preparation

- Each party prepares a brief summary of issues.
  - Relevant documents are exchanged (contracts, correspondence, invoices).
  - Attorneys advise clients on legal position, risks, and acceptable outcomes.
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Step 3: Opening Session

- Mediator explains the process, rules, and objectives.
  - Each party outlines their perspective without interruption.
  - Issues are clarified and agenda is set.
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Step 4: Joint Discussion and Private Sessions

- Mediator facilitates discussion to identify interests, not just positions.
  - Private caucuses may be held with each party.
  - Settlement options are explored confidentially.
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Step 5: Negotiation and Resolution

- Parties negotiate with mediator assistance.

- Legal and practical solutions are tested.
  - Compromise and creative outcomes are encouraged.
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#### Step 6: Settlement Agreement

- If agreement is reached, terms are recorded in writing.
  - Attorneys may draft or review the settlement agreement.
  - Agreement may be made an order of court if required.
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#### Step 7: If Mediation Fails

- Parties retain full right to proceed with litigation or arbitration.
  - Confidential mediation discussions may not be used in court.
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### **6. Confidentiality in Mediation**

- All mediation discussions are confidential.
- Statements made cannot be used as evidence in court.
- Exceptions apply only for illegality or serious misconduct.

Confidentiality encourages openness and honest negotiation.

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### **7. Your Rights in Mediation**

- Right to voluntary participation
  - Right to withdraw at any stage
  - Right to legal representation
  - Right to confidentiality
  - Right to fair and impartial mediation
  - Right to enforce a signed settlement agreement
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### **8. Advantages of Mediation**

- Faster than litigation
  - Significantly lower cost
  - Flexible and informal
  - Preserves relationships
  - Confidential and private
  - Parties control the outcome
  - Reduces emotional and financial strain
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## **9. Mediation vs Litigation (Quick Comparison)**

Mediation Litigation

Voluntary Compulsory once commenced

Confidential Public court record

Collaborative Adversarial

Flexible outcomes Judge-imposed outcomes

Faster resolution Often lengthy

Lower cost Higher legal costs

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## **10. Typical Mediation Timeline**

Stage Duration (Approx.)

Preparation 1–2 weeks

Mediation session 1 day or several short sessions

Settlement drafting 1–7 days

Many disputes are resolved within weeks rather than months or years.

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## **11. Documentation Checklist for Mediation**

- Mediation agreement
  - Summary of issues
  - Relevant contracts and correspondence
  - Financial statements or invoices (if applicable)
  - Draft settlement terms
  - Final written settlement agreement
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## **12. Why Use an Attorney During Mediation?**

An attorney ensures:

- Your legal rights are protected
- You understand risks and consequences
- Settlement terms are legally enforceable
- Agreements are clear, balanced, and binding
- You avoid unintended future disputes

RW KRUGER AND ASSOCIATES INC assists with:

- Civil and commercial mediation
- Family law mediation
- Pre-litigation dispute resolution
- Drafting and enforcement of settlement agreements

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