

LETS

Mediate

AUGUST 2024 ISSUE # 14



*Exciting
News*

THE QUALITIES OF A GREAT MEDIATOR

with Expert Patrick Scott

COMPATIBILITY MODE !

Edmund Ryno Pohl (AGA) SA
Treasurer

UPCOMING AGM

28 August 2024

EMPOWERING MEDIATORS
LEGAL REPRESENTATIVES: ALLY OR
ENEMY?



FROM THE EDITOR

Dear MiMM Members,

As we gradually welcome the arrival of spring, exciting changes are blooming at MiMM! We're thrilled to share that our website development is progressing superbly, with testing now in full swing. The updates are substantial and designed to enhance user experience, making everything more accessible and intuitive for you. A special shout-out goes to Sasha Wait for her dedication and hard work on this project—her vision and commitment are truly appreciated.

In addition, MiMM recently participated in a dynamic conference at the Nelson Peace Centre. Be sure to check out the details of this remarkable event in this newsletter—it's one you won't want to miss!

With a new treasurer at the helm, we're also giving our finances and membership register a fresh update. These improvements, combined with the new website, will make joining and renewing your membership smoother than ever. A big thank you to Mr. Pohl and his team for their outstanding efforts over the past few months.

As we speed towards December, our next newsletter will find us reflecting on the year's end, family time, and maybe a bit of travel. Until then, let's hold onto the joy of summer days filled with loved ones and relaxation.

See you in December!

MEDIATION IN MOTION MEDIATORS

UPCOMING EVENTS

21 AUGUST 2024 | 18:00 - 19:30 | 28 AUGUST 2024

ASK THE EXPERT

ANNUAL GENERAL MEETING



Susan Verhoef

Letter From the Chair

DR SHAMAL RAMESAR

Dear MiMM members,

As we welcome South Africa's 7th Administration post-democracy, we find ourselves reeling with excitement at the formation of a Government of National Unity (GNU). This unprecedented result bears testimony to the fact that we are a country longing for change, and many are optimistic that the GNU will welcome new ideas and new ways of working on various matters that have previously become stagnant. As mediators, we remain hopeful that the practice of mediation starts to gain momentum and acceptance as a credible mechanism of conflict resolution in our country. All in all, there are certainly exciting times ahead.

As we reach the midpoint of 2024, I am pleased to share some exciting developments and updates from our organization. I am delighted to welcome Mr. Ryno Pohl as our new Treasurer. His extensive experience in financial management will be invaluable as we continue to grow and expand our services. Additionally, we have established a new Legal Sub-Committee, comprising Mr. Andries Stander, Mr. Michiel Bouwer, and Ms. Anri Le Roux. Their expertise will guide our legal affairs, ensuring that we adhere to best practices and maintain the highest standards of governance.



One of the major highlights for this quarter is the revamping of our website. Our new, user-friendly design is aimed at improving accessibility and providing a more streamlined experience for our users. We believe that this upgrade will better serve our members and visitors, offering more comprehensive resources and up-to-date information about our programs and services. I encourage everyone to explore the new features and provide us with feedback to continue refining our online presence.

Our partnership with the South African Medical Association (SAMA) continues to grow. This collaboration highlights our commitment towards our mission to integrate mediation practices into various professional sectors. We are currently finalizing an MoU for a similar project with Truex, who acts on behalf of the South African Society of Obstetrics and Gynaecologists. By working together, we aim to develop specialized programs and mediation services tailored to the medical community.





"OUR PARTNERSHIP WITH THE SOUTH AFRICAN MEDICAL ASSOCIATION (SAMA) CONTINUES TO GROW. "

Our submission to the South African Qualifications Authority (SAQA) is currently on hold due to a potential collaboration with the Alternate Dispute Resolution Practitioners of South Africa (ADRP-SA). This pause is strategic, as we explore opportunities to align our accreditation efforts with broader industry standards and frameworks. This collaboration could enhance our certification programs and provide our members with more robust and recognized qualifications. Preliminary discussions have taken place between our organisation, and we will keep all our members informed as this situation develops.

As we look forward to the rest of the year, I am confident that these developments will significantly bolster our organization's capacity to achieve its goals. Our partnerships, both existing and potential, along with our strengthened team, position us well to continue making meaningful contributions to the field of mediation in South Africa.

Thank you for your continued support and dedication to our mission. Together, we will make a difference.



Best wishes,



Dr. Shamal Ramesar
Chairman,
Mediation in Motion Mediators (NPO)

NEXT ONLINE

ASK
THE
EXPERT

21 August 2024
6pm



SAHA WAIT

EXPERT

JOIN US

Join us to explore our exciting new website making subscriptions, newsletter access and mediation bookings easier.

Learn how to register as a member, update your profile, book mediations, and receive payments.



Info@mimmediation.org

EMPOWERMENT

EMPOWERING MEDIATORS LEGAL REPRESENTATIVES: ALLY OR ENEMY?

This article follows an article published in MiMM's newsletter of March 2023, "The role of legal advisers in mediation" written by Adv Alan Nelson. We echo the sentiments of Adv Nelson expressed in the opening remarks of his article that legal representatives have an extremely important role to play in every phase of the mediation process. This article will aim to highlight how difficult and daunting it can be during the mediation, for us as mediators, to deal with a legal representative who is a litigant at heart and most probably also ill-informed about mediation. We conclude this article with a few useful tips about how one can attempt to disarm these obstructive legal representatives and persuade them to cooperate in the mediation so that we can ultimately facilitate a successful outcome to the dispute.

The Problem:

An uninformed legal representation can be a significant hindrance in initiating the mediation process. Mediation relies on the willingness of all parties to engage in constructive dialogue aimed at reaching a mutually satisfactory resolution to their dispute. Legal representatives who are not well-versed in facilitative mediation, or who are overly adversarial may dissuade their clients from considering mediation as a viable option. This reluctance by the legal representatives to consider mediation is unjustified. However, we believe that this reluctance can stem from their lack of confidence in the mediation process due to unfamiliarity, or the fear of losing fees should the dispute at hand be settled quickly through mediation as opposed to going on a lengthy trial

Once this has been overcome, the second challenge is for the mediator to manage that legal representative during the mediation. The arrogant legal representative:

Mediation requires a nuanced approach where legal arguments are balanced with the need for compromise and understanding. Legal representatives who approach mediation solely from a litigious standpoint may struggle to navigate the negotiation process effectively. This can result in missed opportunities to strengthen their client's position through creative solutions or alternative perspectives to resolve the dispute at hand. A tendency to discourage their clients from making concessions or proffering apologies (which might be construed as admissions of liability), which is necessary for litigation, is harmful to addressing dignity violations during mediation.



"MEDIATION REQUIRES A NUANCED APPROACH WHERE LEGAL ARGUMENTS ARE BALANCED WITH THE NEED FOR COMPROMISE AND UNDERSTANDING. "

Uninformed or overly aggressive lawyers may fail to calm their clients and instead exacerbate their emotions, potentially leading to heightened tensions and adversarial interactions. This not only undermines the spirit of cooperation essential for mediation but also risks derailing the process altogether. The writers recently witnessed one of the parties leaving the mediation still disgruntled, despite a settlement agreement having been concluded, precisely because of the uninformed guidance of an arrogant legal representative. Concluding a settlement agreement whilst still feeling disgruntled is a natural breeding ground for future disputes.

The understanding legal representative with obstructive clients (Stefan):

The demeanour and approach of legal representatives can significantly impact the emotional climate of mediation sessions. In a recent mediation conducted by the writers, a legal representative who had the requisite understanding of and appreciation for the benefits of mediation versus the risks inherent in litigation was the greatest asset in the successful resolution of the matter. The legal representative was a useful aid in reality-checking and could be called upon effectively to shift positions, focus the relevant party on its needs, interests and concerns, and also contribute towards creative problem-solving and finding solutions. The value of the presence of such a legal representative cannot be overstated.

It is useful to remember that a party is also likely to mirror the confidence of their legal representative in the mediation process. This was our experience in the aforementioned mediation, where an obstructive and extremely difficult party eventually cooperated and participated in the mediation as a direct result of the constant confidence his legal representative displayed in the mediation process



Useful Tips:

- Be alive to the fact that legal representatives are not neutral bystanders. They are likely to represent one extreme or the other. Identifying whether they are an ally, or an enemy is a vital first step.
 - Alert legal representatives to the court Rules and possible cost order implications should they not properly consider (and cooperate) in mediation
 - Appointing an experienced mediator – possibly with a legal background him/herself – who can take control of the process when the legal representatives become difficult
 - In pre-mediation, emphasize that mediation is about finding a forward-looking approach and does not aim to assign blame
 - It would be worthwhile, even as early as the pre-mediation meeting, to take time to reinforce the legal representative's confidence in both you, as the mediator, as well as the mediation process in general.
 - Bring it to the legal representative's attention that this process is different from arbitration and litigation. Where necessary, have separate side sessions with legal representatives only where the pros and cons of mediation can be discussed openly and frankly without the risk of embarrassing them in the presence of their clients.
- Endeavour to shift the focus from the legal representatives to clients – starting with something as simple as seating arrangements.

EMPOWER



Conclusion:

We have recently witnessed, firsthand, how the legal representative can either be a formidable foe or a tremendously useful ally to the mediator in a mediation. One of the co-writers, despite being a trained mediator, found himself in the difficult position of potentially being a stumbling block to the successful resolution of a matter during a mediation where he was representing one of the parties. This perhaps is indicative of the fact that mediators should approach legal representatives with the same level of empathy as they do the parties during the mediation. The legal representatives, after all, simply want to achieve the absolute best outcome for their clients.

**Written by Michiel Bower &
Anri le Roux
Bower & Olivier Inc.
June 2024**

Central to successful mediation is the role of legal representation, which ideally should be informed, skilled, and adept at fostering agreement. The role of a skilled mediator becomes crucial in mitigating the effects of an uninformed legal representative during mediation. Mediators must skilfully shift the focus away from purely legalistic arguments towards understanding their clients' underlying interests and facilitating constructive dialogue. However, achieving this balance is easier said than done. It requires mediators to navigate complex interpersonal dynamics and legal complexities while maintaining neutrality and fostering an environment conducive to mutual agreement.

The solution thus, in a broader sense, is to firstly educate legal representatives who have no experience with facilitative mediation, and then to ensure that these legal representatives are confident in, and truly advocate for, the process of facilitative mediation. This is not a simple task and your attempt (as mediator) to overcome these challenges can begin long before the actual mediation. If we aim to make mediation a more prominent form of dispute resolution, we should seize every opportunity to talk about this revolutionary, potentially life-changing and extremely effective dispute resolution mechanism called mediation.

N.S. We invite any of our MiMM colleagues who would like to further discuss, or need assistance with dealing with obstructive legal representatives to contact our offices at mediation@bolaw.co.za.



Anri
le Roux

Michiel
Bower

Compatibility Mode

Dear Members

I am very excited to serve the organisation as the new Treasurer.

I am a business owner, accountant, and family guy. I started my own accounting firm, Pohl business Consulting, right after I finished my audit SAICA articles in December 2021. I provide professional accounting, consulting, taxation, and financial management services, with a mission to assist small to medium size businesses.

I am happy to report that we have successfully converted to using SageOne online accounting software. The organisation and financial data are now being processed monthly.

The organisation's Tax profile is also active and tax-compliant.

The organisation is in the position to issue a section 18(a) Tax certificate when donations are received.

Annual membership fees will be paid directly on the new website using the organisation's Payfast account. Accessibility and visibility of the member's profile on the new website will be directly linked to the member's compliance in paying annual fees. This will ensure the timely collection of all membership fees and simplify the process for our members.

We have identified the organisation's need for an administrator. The full scope of the responsibilities expected of this individual will still be determined in due course. In the meantime, there is a designated person responsible for operating the emails to ensure a timely response.



ERPOHL

Edmund Ryno Pohl (AGA) SA
Treasurer
Mediation in Motion Mediators (NPO)

The Qualities of a Great Mediator

What are the qualities of a great mediator? Obviously, he or she needs to be properly trained, with a balance of theory and practice. But is there more to it than that? My personal view is that there is. A good mediator is properly trained, but a great mediator is properly trained and has certain qualities that make him or her better than just good. In this ponder, I will explore some of those qualities.

Sometimes, a party to a dispute just wants to be heard. To vent, to tell their story. Nobody has listened to them, and they have decided to sue. The first quality that I would identify, is the ability to listen. Listen to what that party has to say. And in a way that they know that you are listening. Acknowledge what they say. You don't have to agree with them. In fact, you shouldn't agree with them to maintain your neutrality. But give them a sense of being heard.

Closely linked to the first quality is empathy. Show that you have understanding for their situation, within the constraints of neutrality. The best example that I have of this, is a matter that I did some time ago where, after the pre-mediation meeting, the one party said to me, "It feels like you are on my side - I know that you are not and that you are neutral, but it feels like it". My response was, "I am on your side, but I am also on the other party's side".

It is also important to build up trust with the parties. How do we, as mediators, do this? The first two qualities, the ability to listen and empathy, help, but it is also helpful to chat to them about their interests, personal circumstances, what kind of work they do, their hobbies and, importantly, that you are not there to judge them.

Patience is a good attribute, but not too patient that you let parties ramble on for lengthy periods. Remember, there is another party present who has to listen to this. So, balance patience with control over the mediation, not allowing one party to dominate the discussion.



What about humour? Of course, you don't want to turn the mediation into a comedy show or appear flippant towards the parties' problems. But the odd bit of tactful humour does wonders to lift the tension. Nothing political, religious or contentious, but the odd comment with a humorous touch will have a positive result.

Another useful attribute is the ability to think out of the box. To help the parties consider options that were not initially apparent to them. These can be developed in either private or joint sessions, depending on the circumstances. It is important how you raise these options with the parties. You don't want to be seen as giving advice, but you can help the parties to identify that option themselves, by giving them some pointers, asking the right questions and letting them discover the option themselves.

What I have touched on here, are qualities, not skills. There are many other qualities that are useful, and these will vary from mediator to mediator. Find the qualities that work for you and develop them to the best of your ability. In a future ponder, I will focus on some important mediator skills.



Patrick



Patrick Scott has a Master's degree in Mediation and Conflict Resolution from the University of Strathclyde in Glasgow, serves on the Board of Mediation in Motion Mediators and practises as a mediator in Scotland and South Africa (remotely).





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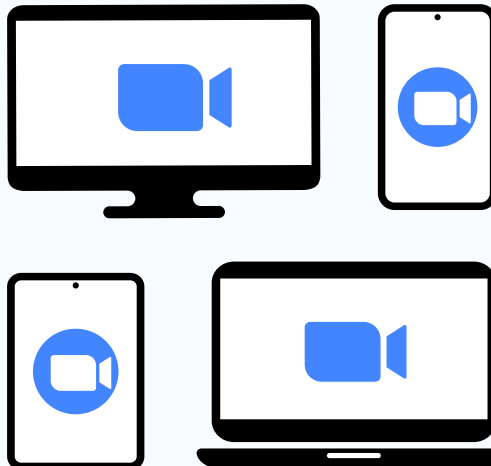


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Our Legal System is Failing the People of Our Country



Our Legal System is Failing the People of Our Country

A recent conference held at the Peace Centre on the Nelson Wine Estate near Paarl has highlighted the severe shortcomings of the South African legal system. The two-day event, attended by judiciary members, senior advocates, attorneys, legal advisors, and other professionals, revealed shocking delays in the legal process and proposed resolutions to address these issues.

The Problem

The conference discussions revealed that litigants can wait up to five years for their cases to be heard, with some matters taking over twenty years to be resolved by the Supreme Court of Appeal. In Gauteng province alone, there is a need for at least twenty additional high court judges, a 30% increase to manage the current caseload.

The stagnation in judges' and magistrates' salaries since 1994 despite increasing Workloads, has significantly impacted the quality and speed of judgments. Litigants often wait over a year and a half for interim judgments.

An attempt to resolve this through the introduction of High Court Rule 41A, which aimed to promote mediation over litigation, has failed. The rule, replicated in the Magistrates Court Rules, has not eased judicial overload or increased mediation rates.

Using the MiMM Model to Your Advantage: The Free Pre-Mediation Meeting:

The writers hereof, as mediators, are convinced that when drafting an agreement or contract, one must have a forward-looking approach when describing how the parties should deal with their dispute. At the time the parties sign the agreement we assume that no dispute exists and that they are willing, and even possibly excited, to engage with one another. No one gets married with the intention of getting divorced. It is crucial that one takes advantage of these positive circumstances by proactively writing in a clause that prompts the parties to consider mediation as the appropriate dispute resolution mechanism as opposed to arbitration or litigation, at least as a point of departure.





Why Mediation Fails

Several reasons were discussed at the conference for why Rule 41A has not succeeded:

- 1. Lack of Lawyer Support:** Many trial lawyers do not advise their clients about mediation, often due to financial incentives to pursue litigation.
- 2. Knowledge Gap:** Many lawyers lack the necessary knowledge about mediation to properly advise their clients.
- 3. Perception Issues:** Mediation is seen as a sign of a weak case, deterring lawyers from considering it.
- 4. Confusion Over Mediation Types:** The term 'mediation' encompasses different conflict resolution processes, causing confusion and lack of support from trial lawyers.

The conference highlighted the need for a professional body to oversee mediation standards and accreditation and for a unified list of accredited mediators.

The Broader Impact

Unresolved disputes have far-reaching consequences, including poverty, unemployment, and failed service delivery.

The failed legal system directly affects the dignity and well-being of millions of South Africans.

Proposed Resolutions

To address these critical issues, the conference delegates proposed several resolutions:

- 1. Legislation:** Introduce laws making consensual conflict resolution through facilitative mediation mandatory before litigation.
- 2. Infrastructure:** Develop a local government infrastructure to provide all South Africans with access to mediation.
- 3. Engage with SALRC:** Collaborate with the South African Law Reform Commission on Project 94 to develop a mediation statute.
- 4. Public Awareness:** Raise public awareness about mediation benefits and lobby for support from various sectors.
- 5. Professional Body:** Support the development of a professional body for mediation standards, accreditation, and education.

6. Judiciary Engagement: Host workshops for judges and magistrates to promote the application of Rule 41A.

7. Ethical Obligation: Encourage the Legal Practice Council to remind lawyers of their ethical duty to consider mediation.

8. Pro Bono Screening: Implement a case screening process in courts to identify cases suitable for mediation.

9. Stakeholder Workshops: Organize workshops with key stakeholders to promote mediation.

10. Rule Amendments: Propose amendments to existing rules to include more opportunities for mediation.

11. Pilot Projects: Launch pilot projects with state attorneys to refer cases to mediation and publish the outcomes.

12. Mediation Ambassadors: Actively promote mediation at professional conferences and meetings.

13. Mediator List: Compile a list of competent mediators who offer free pre-mediation meetings.

14. Constitutional Analysis: Conduct a legal analysis of section 34 of the Constitution to align it with principles of dignity and reconciliation.

Call to Action

We urge members who can assist in planning and implementing these resolutions to contact Advocate Alan Nelson. Together, we can address the crisis in our legal system and ensure justice for all South Africans.

For further information or to offer your assistance, please contact Advocate Alan Nelson on Nelson@law.co.za

**Nelson Peace centre.
R44, Windmeul,
Western Cape, Paarl,
7630**

“OUR GOAL THIS YEAR HAS BEEN TO DESIGN AND EXECUTE A PLATFORM THAT NOT ONLY BENEFITS OUR MEMBERS BUT ALSO MAKES MEDIATION MORE ACCESSIBLE....”

We're thrilled to announce that we've been hard at work recreating the MIMM website, bringing you a more streamlined and user-friendly experience. Over the past two months, our dedicated developers have been crafting a system that optimizes membership registration and verification of mediation qualifications. Our new website will feature an automated membership registration process, allowing you to easily update your profile and keep your information up to date. With the integration of online payments, your subscription will be conveniently collected annually on the anniversary of your first online registration. But that's not all—we've also added a function that enables you to book online and in-person mediations, manage payments, and access valuable resources like mediation templates and informative videos. We're excited to officially launch the new website at our upcoming "Ask the Expert" session, where we'll guide members on how to navigate and make the most of the site. If you can't attend, don't worry! We'll be recording the session and sharing it on our new and improved site. The revamped website will also make it easier to share our newsletter, with a simple link that can be easily distributed to members.

A lot of effort has gone into creating this platform, which will be the foundation for future social media posts and campaigns. Our goal this year has been to design and execute a platform that not only benefits our members but also makes mediation more accessible. Of course, the site also caters for booking and payment of in-person mediations.

Stay tuned for more updates, and we look forward to seeing you online!



Thank you for your continued support and engagement with MiMM. Together, we're making strides in promoting mediation and facilitating constructive resolutions.

Warm Regards,

*Sasha
Wait*





MEDIATION IN MOTION MEDIATORS

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