

Why South Africans will have to consider mediation before turning to courts

The Rules Board for Courts of Law has issued a draft rule proposing a new Rule that will compel South Africans to declare that they have considered mediation as a solution to any forthcoming legal matter and, if not, the court itself is obligated to manage cases effectively and recommend mediation as a dispute resolution if it deems it appropriate.



Mediation, which was introduced in South Africa as an Alternative Dispute Resolution (ADR), is a time- and cost-effective means whereby parties to a dispute can appoint a qualified neutral third party to act as mediator to facilitate an agreed settlement. The mediator facilitates discussions between the parties, assisting them in identifying issues, clarifying priorities, exploring areas of compromise and generating options to resolve the dispute.

Following countries such as the USA, UK and Australia, South Africa has recognised mediation as an effective method of resolving differences. Recent case law in the UK has set out that ADR should be strongly encouraged and prescribes when ADR is an appropriate mechanism. South Africa will soon follow suit as the proposed rule, Rule 41A, will require the practising representative attorney to declare before the court that he/she has advised his/her client to consider mediation as a means of attempting to resolve the dispute which is the subject of the proposed proceedings. The rule will require the parties, when issuing summons or application or delivering a plea or answering affidavit, to indicate whether they consider mediation to be possible and to give reasons for their consideration. Failing to do so could result in penalisation by way of costs orders.

PJ Veldhuizen, managing director of Gillan and Veldhuizen Incorporated and a practising commercial mediator, says that the new proposed rule will “effect a much-needed easing-off of pressure on South African courts and legal process, not to mention the costs of legal representation.”



PJ Veldhuizen, managing director of Gillan and Veldhuizen Inc.

Attorneys should be advising clients to consider mediation as a possible resolution not only because of the financial benefits but also to save themselves a lot of unnecessary time delays in resolving matters. Veldhuizen stresses that disputing parties going the ADR route must make certain that their mediator is qualified and reputable.

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