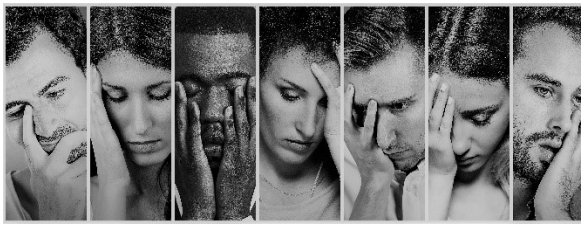
MEDIATION NETWORK

FIGHT, FLIGHT OR MEDIATE



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WHAT IS MEDIATION?

Mediation is a process where a neutral and skilled mediator can assist families who are in conflict to work out arrangements for themselves and their children. Mediation is a confidential process which creates an environment for open communication between the parties involved. Mediation is also a voluntary process that can help two sides to reach an acceptable solution to their differences. A mediator can help the parties to examine ideas and options in a neutral, safe environment where they are both free to express their opinions.

"FAMILY MEDIATION SERVICES THAT ARE FAIR, AFFORDABLE and EFFICIENT"

What is litigation?

Litigation is the process of taking a dispute to a court of law. This process is complicated and formal, involving a series of technical steps in terms of the prescribed rules of the court. The parties are dependent on their legal representatives and the court's interpretation of the facts of their case and the law, thereby placing the outcome of their case in the hands of other persons. The alternative to litigation in family matters are conciliation, mediation, and facilitation.

Why choose mediation over litigation?

- **It costs less**

For example: The average cost of a litigated divorce can easily be more than R150 000 and the average cost of a mediated divorce is usually less than R30,000.

When both spouses use one mediator, they can share the cost. If they decide to mediate the dispute, they can expect to save more than 75% on legal costs.

Should they choose to appoint an attorney, his or her fees should be discussed at the first consultation to avoid any later surprises. Litigation can easily trigger increased conflict, resulting in increased legal costs. A mediated divorce is typically settled in 8 hours or less.

For those who cannot find settlement through mediation, traditional legal intervention through divorce attorneys is always available as the next step.

- **Control over decisions**

Would you prefer to make your own decision regarding your family, or would you rather let someone else decide on your behalf?
Mediation offers the parties an opportunity to come up with unique solutions to the problems which their family face. When a family dispute goes to trial, the court will decide what is best for you and your family. You will then have to abide by the court's decision. Thus, there is very little room for creative solutions which may better suit your family. According to statistics, mediation takes 95% less time than court proceedings.

MEDIATION VS LITIGATION

- **Confidential**

The mediation process is covered by confidentiality. This creates an environment where parties can communicate without the fear that information or admissions will be held against them. All sensitive family matters stay private. Litigation is within the public domain and therefore court cases are public information.

- **Voluntary**

The mediation process is voluntary for all parties involved, including the mediator. This means that any party may at any time withdraw from the mediation process, without compromising their legal position or rights.

• Less Stressful

Compared to litigation, mediation is less formal and therefore much less stressful. At MEDIATION NETWORK we insist that the parties communicate in a respectful and non-threatening manner.

• Neutral Perspective

A MEDIATION NETWORK mediator is strictly neutral and impartial: he or she does not act for either party. The mediator asks the tough questions and steadily moves the process towards understanding and settlement.

• Most Cases Settle

Did you know that most lawsuits settle on the doorsteps of the court? Why then not mediate your case from the onset? When the case is settled through mediation, the agreement can still be made an order of court.

Benefits of Settlements reached through mediation:

When "solutions" are imposed on people, they are more likely to resist them. A court may order certain specific conditions e.g., a child visitation schedule in a litigated divorce. This may cause one of the parties to comply reluctantly, leading to on-going strife, friction, and misery.

People who work together voluntarily to create a shared, mutually beneficial plan have a vested interest in the success of the plan. There is a much higher likelihood of the parties abiding by such a mutual agreement and having less conflict in the future.

Mediation is right for you if:

- Children are involved, and you need to act swiftly in the best interests of the children
- You wish to save money
- You are not prepared to go through a long and costly court process

Mediation is not the only alternative to a formal court experience, but it is one to consider seriously.

What is the significance of the Brownlee case for mediation?

The case of **MB v NB 2010** confirms the appropriate use of mediation. As per Brassey AJ:

"On the facts before me it is impossible to know whether the parties knew about the benefits of mediation, but I can see no reason why they would have turned their backs on the process, especially if they had been counselled on the matter by the attorneys. What is clear, however, is that the attorneys did not provide this counsel; in fact, in the course of the pre-trial conference they positively rejected the use of the process. For this they are to blame, and they must, I believe, shoulder the responsibility that comes from failing properly to serve the interests of their clients."

The obligation of attorneys and parties in civil litigation to use mediation was confirmed in a recent judgment.

The Judge further found that the parties' legal representatives (and specifically the attorneys) had a positive duty to advise the parties of these benefits, which in this instance they had failed to do.

An adverse cost order can be made, even against successful parties, where they have neglected or refused to first follow the mediation process.

Consequently, the Court capped the fees that the attorneys could recover from their own clients to that which would be allowed on taxation on a party and party basis.

What do we offer?

• Divorce Mediation

Divorce is stressful for the entire family. Mediation provides a facilitated, legally formalized process of negotiations.

We offer clients access to our panel of:

- Mediators
- Attorneys
- Social workers
- Financial advisors
- Psychologists
- Play therapists

• Parenting Plans

A Parenting Plan is a roadmap for separated or divorced parents. It ensures co-operation from both parents for a better future for their child. It helps to reduce future conflict by reducing tension and stress of the entire family. MEDIATION NETWORK provides a comprehensive plan for a fraction of the cost in a more timeous manner compared to conventional channels.

• Maintenance Assistance

Every child deserves to be maintained by BOTH parents. This can be achieved through a mediated process that is confidential and transparent. It can also be referred to our panel of experts to ensure that the child remains protected, and the individual parents are not taken advantage of.

NABFAM certified mediators
Scan for more information on our website.