

Legalese Mediation

We believe that resolving disputes can be both amicable and constructive. Traditionally, commercial disputes result in litigation, which is costly, time-consuming, emotionally grueling and often ineffective. Everyone involved loses something (except the lawyers).

What many people don't realize is that there is a growing international trend which focuses on finding alternate ways to resolve disputes. Legalese is proud to offer an innovative and solution-focused service of mediation.

Mediation gives parties the opportunity to resolve conflicts swiftly and amicably, saving wasted time, damaged relationships, lost productivity and unnecessary legal fees. Mediation can offer solutions without disempowering the parties by taking the decision-making responsibility away from them, at a fraction of the cost of formal litigation.

Disputes by their nature are tough. It's not just money on the table, but egos and emotions too. What can often help is a little outside assistance.

We help clients to negotiate mutually acceptable, realistic and legal settlements of their disputes.

What do we offer?

Legalese Mediation provides assisted resolution for parties involved in disputes, disagreement or misunderstanding, facilitated by a neutral and independent qualified mediator.

Our highly qualified commercial mediators are accredited by the African Centre for Dispute Settlement, Conflict Dynamics, the Centre for Effective Dispute Resolution (CEDR, UK) and the Alternative Dispute Resolution Group (ADR, UK), and bring more than ten years mediation experience and practical insight to support a broad range of clients, industries and disputes.

Areas of expertise:

1. Commercial agreement and relationships
2. Business divorce
3. Disputes involving technology development
4. Entertainment and media industry
5. Intellectual property disputes
6. Partnership and shareholder exit strategies
7. Wills and family estate disputes
8. Aviation industry disputes

Costs

We will advise the parties on the recommended length of mediation necessary after being briefed on the matter. All prices are subject to change depending on the complexity of the matter.

SERVICE	PRICE*
Half day mediation (4 hours)	R4 000.00
Full day mediation (8 hours)	R7 500.00
Additional work (hourly rate of)	R650.00
Settlement agreement (starting at)	R3 500.00

*excl. VAT

FAQs

What is mediation?

Mediation is a voluntary, assisted negotiation process which utilises a trained mediator as an independent third party to create a safe and controlled space for parties to resolve a dispute or difficult matter.

The mediator uses their skills to guide the parties through a dispute, with a focus on the underlying issues and relationships, rather than just the parties' legal rights and obligations. Mediation results in creative solutions to seemingly unsolvable problems, and provides resolution options not always available during litigation.

Mediation is recognised as an excellent option for resolving disputes and is a growing industry in South Africa. Globally, mediation is becoming mandatory in many legal systems due to its exceptional success rate - South Africa included. In the 2016 UK CEDR Audit, an estimated 10 000 mediations were performed in England and Wales during that year, with a settlement rate of 86%.

How does the process work?

Prior to the mediation, the mediator will make contact with all parties to explain the process and answer any questions. During the mediation, a formal yet flexible process is followed. Typically, all parties meet in a joint session and are given an opportunity to tell their side of the story. The mediator then has private, confidential sessions with each party, where interests and concerns are explored, and possible outcomes laid out. The mediator then works with the parties to address the issues raised in an effort to find a solution that satisfies everyone. Once a solution is reached, Legalese will assist the parties in drawing up a settlement agreement.

The whole mediation process is strictly confidential and off the record. The mediator is neutral and does not represent either party in any capacity. Both parties must consent to mediation, and the parties themselves are ultimately in control of the decision to settle and the terms of the resolution.

Is my matter suitable for mediation?

Mediation has substantial success in settling disputes in the commercial sphere, in employment relationships, in families and in communities. No matter is too small or too large for mediation. It is useful for disagreements over intellectual property between developers and tech companies, contractual obligations in the entertainment industry and to amicably determine terms for business divorce.

Mediation is tough, (but still possible) when parties are totally unwilling to budge, if one party seeks to clarify the law, if a party wants to publicise the dispute, or if either party is severely intimidated.

At what point in the dispute can I mediate?

Pre-lawsuit mediation is widely accepted as a sensible way of resolving disputes before they turn into litigation. However, parties can mediate at any point in a dispute - from the initial disagreement, to when communications have broken down, or even when litigation proceedings have begun and become protracted.

Parties to a mediation do not give up their rights to resort to or continue a litigation process. Additionally, no offer, concession or information disclosed during the mediation can be used as evidence in any subsequent legal proceedings.

Will I get legal advice?

While some of our mediators are attorneys, our mediators will not give legal advice during the mediation. Their role is not to make decisions or come to conclusions about the merits of either party's argument or position. However, if the dispute is complex, parties are encouraged to have access to independent legal advice on the day of mediation, either through direct representation, or through the telephone, should it be required to clarify an issue or assist with a decision. When the parties come to an agreement, the parties will determine the terms of the agreement themselves, which will be drawn up by Legalese's legal team, according to the parties' instruction. Neither party will be bound to any decision made during mediation until the terms are in writing and signed by both parties.

What's the difference between mediation, arbitration and litigation?

In mediation, the parties are responsible for and control the dispute. No decision-making power is given to the mediator. The outcome is determined by the parties themselves. Mediation is private, and a more informal procedure than arbitration. It happens within a predetermined time-frame and results in a contract between parties.

In arbitration, the outcome of the matter is decided according to objective standards - it only considers the law and past conduct, rather than the interests of the parties or the future of the relationship. Arbitration is based on rights, rather than possible outcomes. The parties have to persuade the arbitrator of its point of view, rather than work with the opposing party to understand both sides of the story. Arbitration results in a private agreement between parties, which can be formalised via court order.

Litigation uses state courts or tribunals to resolve a dispute publicly according to highly formalised rules, processes and laws applicable. It is decided by a judge or magistrate, and usually results in one party winning, and one party losing. It doesn't accommodate for views to be expressed that don't fit into the black letter of the law. It's expensive because it takes a long time (sometimes years) to prepare for and undergo - time you have to pay a lawyer for.

How do I know my mediator is neutral?

The mediator acts as a facilitator in mediation - not a judge, advisor, or agent for either party. Our mediators have been highly trained to remain unbiased and control the mediation process. The parties themselves determine the content and the outcome of the dispute. The mediator assists the parties in working towards a negotiated agreement. If there is any possibility of a conflict of interest, our mediators will hand the matter over to a highly qualified colleague.

Legalese Mediation is independent from any other operations within Legalese. Whatever happens in the mediation, stays in the mediation.

Do I have to be in the same room as the other party?

Mediation is a flexible process which can be tailored to meet the unique aspects of each matter, and there may be circumstances when it is not desirable for parties to be in the same room together. However typically joint sessions, when properly managed, provide value and enhance the likelihood of a satisfactory resolution.

Who pays?

Traditionally, both parties contribute equally to the mediation. However, in your mediation agreement, you can determine who will pay for the session.

Our mediators

Louise Gardner

Louise has 18 years of international experience in the corporate environment and 10 years of experience working in and with small businesses and startups. As a facilitator, she can assist teams that need a neutral party to help them navigate a complex discussion or implement changes. As a mediator, she can guide and support parties to proactively resolve conflicts that emerge in the workplace or in the context of business relationships. Louise is an accredited Civil and Commercial Mediator through the African Centre for Dispute Settlement (ACDS) and the ADR Group (UK). She also holds a MA in International Relations (University of Kent) and an Advanced Certificate in Alternative Dispute Resolution through the Arbitration Foundation of Southern Africa (AFSA) and University of Pretoria.

Simon Attwell

Simon is proficient at managing relationships for organisations and individuals, having presided over the commercial and personal interests for Freeground Records and Freshlyground for the last 15 years. He has a thorough understanding of the complex world of publishing and intellectual property disputes, and experience mediating disputes in multiple areas of the entertainment industry. Additionally, a background in mediating commercial partnerships, as well as family will and estate settlements and tech-related issues, makes Simon a dynamic member of the Legalese team. He is an accredited Commercial Mediator through Conflict Dynamics South Africa, and the Centre for Effective Dispute Resolution (CEDR) in the UK.

Eitan Stern

Eitan Stern has years of experience as both a tech entrepreneur, a practising attorney and director of Legalese. As a problem solver and innovator, Eitan is skilled at brainstorming potential ideas and creative solutions with parties stuck at a difficult crossroads or negotiating terms. He's worked with sectors across the board, from creative, advertising and media, to educational, non-profit and technology industries, and knows just how to turn mediation decisions into legal solutions.

Contact Us

(T) + 27 (0)21 422 0214

(W) legalese.co.za

(E) info@legalese.co.za

190A Buitengracht Street
Bo Kaap, Cape Town, 8000

JoziHub, 44 Stanley Ave,
Milpark, Johannesburg, 2092

 @creativelegalsolutions

 @Legalese_SA

 @lawyersoflegalese