



CD DIRECT

SPECIMEN FORMS, JOINT MINUTES AND AGREEMENTS IN TERMS OF HIGH COURT RULE 41A



**CONFLICT
DYNAMICS**

TRAINING
& DISPUTE
RESOLUTION
SERVICES

Table of Contents

SPECIMEN NOTICE IN TERMS OF MEDIATION RULE 41A SUB-RULE 2 OF THE HIGH COURT ..	3
SPECIMEN JOINT MINUTE IN TERMS OF MEDIATION RULE 41A SUB-RULE 4(a) OF THE HIGH COURT	5
SPECIMEN AGREEMENT TO MEDIATE IN TERMS OF MEDIATION RULE 41A SUB-RULE 4(b) OF THE HIGH COURT	7
SPECIMEN NOTICE IN TERMS OF MEDIATION RULE 41A SUB-RULE (7)(a) OF THE HIGH COURT	12
SPECIMEN JOINT MINUTE IN TERMS OF MEDIATION RULE 41A SUB-RULE (8)(b) AND (c) OF THE HIGH COURT.....	13
SPECIMEN SETTLEMENT AGREEMENT IN TERMS OF MEDIATION RULE 41A SUB-RULE (8)(e) OF THE HIGH COURT	15
ALTERNATIVE SPECIMEN SETTLEMENT AGREEMENT IN TERMS OF MEDIATION RULE 41A SUB-RULE (8)(e) OF THE HIGH COURT.....	18

SPECIMEN NOTICE IN TERMS OF MEDIATION RULE 41A SUB-RULE 2 OF THE HIGH COURT

This Specimen Notice is for guidance only. It should be adapted to the particular circumstances and legal requirements of the dispute to which it relates. Wherever possible any such Notice should be drafted/approved by each party's lawyer. Although the mediator may be involved in helping the parties to draft acceptable terms, the mediator is not responsible for the drafting of the Notice and should never be a party to the notice.

FORM 27

THE HIGH COURT OF SOUTH AFRICA

(.....)

CASE NO: _____

In the matter between:

.....

Plaintiff/Applicant

and

.....

Defendant/ Respondent

NOTICE OF AGREEMENT OR OPPOSITION TO MEDIATION

TAKE NOTICE THAT the Plaintiff/Applicant/Defendant/Respondent agrees to the referral of this matter to mediation.

The Plaintiff/Applicant/Defendant/Respondent does so for the following reasons:

.....

.....

.....

.....

.....

.....

.....

.....

TAKE FURTHER NOTICE THAT the Plaintiff/Applicant/Defendant/Respondent proposes Conflict Dynamics to facilitate the mediation.

DATED at on theday of.....

Plaintiff/Applicant Attorney

Address

TO: THE REGISTRAR OF THE ABOVE COURT

AND TO: Defendant/Respondent/Attorney

SPECIMEN JOINT MINUTE IN TERMS OF MEDIATION RULE 41A SUB-RULE 4(a) OF THE HIGH COURT

This Specimen Joint Minute is for guidance only. It should be adapted to the particular circumstances and legal requirements of the dispute to which it relates. Wherever possible any such Joint Minute should be drafted/approved by each party's lawyer. Although the mediator may be involved in helping the parties to draft acceptable terms, the mediator is not responsible for the drafting of the Joint Minute and should never be a party to joint minute.

JOINT MINUTE IN TERMS OF RULE 41A SUB-RULE 4(a)

COURT:FILE NO:

PARTIES:

.....Claimant

And

.....Respondent

The Claimant and Respondent in this matter confirm that they have agreed to mediate their dispute.

They will enter into an Agreement to Mediate in terms of sub-rule (4)(b).

The time limits prescribed by the Rules for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party to the dispute from the date of signature of this minute to the time of conclusion of mediation.

Provided that any party to the proceedings who considers that the suspension of the prescribed time limits is being abused, may apply to the court for the upliftment of the suspension of the prescribed time limits.

The process of mediation shall be concluded within 30 days from the date of signature of this minute provided that a Judge or the court may on good cause shown by the parties extend such time period for completion of the mediation session.

SIGNED AT ON

WITNESS:

1.....

CLAIMANT

2.....PERSONAL CAPACITY/
DULY AUTHORISED

(Attach copy of authority/resolution)

WITNESS:

1.....

2.....RESPONDENT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/resolution)

**SPECIMEN AGREEMENT TO MEDIATE IN TERMS OF MEDIATION
RULE 41A SUB-RULE 4(b) OF THE HIGH COURT**

AGREEMENT TO MEDIATE

BETWEEN

[PARTY A]

AND

[PARTY B]

THIS AGREEMENT is made on

BETWEEN

1 _____ “the Mediator”, (a term which incorporates a Co-Mediator or Observer Mediator in attendance at the Mediation with the Parties’ permission),

The Parties are:

2 _____ (“Party A”)

3 _____ (“Party B”)

(and together referred to as “the Parties”)

THE PARTIES AGREE TO A MEDIATION of the Issues arising between Party A and Party B relating to (the Issues) on the terms set out in this Agreement to Mediate;

AND THAT:

Mediator

1) _____ will be the Mediator.

Role of the Mediator

- 2) The Mediator will:
 - a) attend any meetings or discuss the Mediation on the telephone or any other agreed mode of communication with any or all of the Parties preceding the Mediation if requested to do so or if the Mediator decides that this is appropriate;
 - b) read before the Mediation all the documents sent to him/her;
 - c) chair and determine the procedure for the Mediation, in consultation with the Parties;
 - d) assist the Parties to settle the Issues which have arisen between them, while reserving their rights to revert to any dispute resolution option if they do not reach settlement terms in the Mediation.
- 3) The Parties understand that the Mediator is neutral, impartial and independent and does not give legal advice. They agree that they will not make any claim of any nature against the Mediator in connection with this Mediation unless the Mediator has acted dishonestly or in bad faith.
- 4) The Mediator confirms that they have no interest in the disputed Issues or their outcome and has had no undisclosed prior dealing with the Parties in relation to the disputed Issues.

Before the Mediation

- 5) The Mediator will contact the Parties to discuss their preparation for the Mediation.
- 6) Each of the Parties will prepare and send to the Mediator and all other Parties such brief summary setting out its main concerns and Issues as the Mediator deems appropriate.
- 7) The Parties agree to exchange with each other, under the Mediator's supervision, documents relevant to the disputed Issues, and also provide these documents to the Mediator.

Conduct of the Mediation

- 8) The Mediator shall decide, when possible in consultation with the Parties, how the Mediation is to be conducted.
- 9) The Parties agree to comply with all requests of the Mediator in relation to the good conduct of the Mediation.
- 10) The Parties agree to use reasonable endeavours to settle the Issues between them and act in good faith before and during the Mediation.

- 11) The Mediation will take place on _____ at the offices of _____.
- 12) No transcript or recording shall be made of the Mediation, or any part of it, except with the written consent of all participants, including the Mediator. This shall not prevent the Parties or the Mediator from taking a notes. Such notes shall remain confidential and will be destroyed shortly after the conclusion of the Mediation.
- 13) Any settlement reached in the Mediation shall not be legally binding unless it has been reduced to writing and has been signed by or on behalf of the Parties.

Authority

- 14) Each of the Parties will attend the Mediation with a person who has authority to bind that Party to any agreement reached as a result of the Mediation.
- 15) Each Party will inform the other Party and the Mediator prior to the Mediation of the names of the persons attending on behalf of that Party.
- 16) The Parties must consent to the presence of persons other than the Parties and their advisers in the Mediation.

Confidentiality

- 17) During and before the Mediation, the Mediator may speak to the Parties separately in order to improve the Mediator's understanding of each Party's views and to prepare for the Mediation. Information given to the Mediator during such separate talks will be confidential unless the Party who provided that information allows the Mediator to disclose the information.
- 18) Any information, whether or not in writing, arising out of the Mediation shall be confidential and shall not be used for any collateral or ulterior purpose. This includes the terms of any settlement but does not include the fact that the Mediation is to take place or has taken place. Only the terms of settlement may be referred to in the event that a Party brings proceedings in relation to those terms.
- 19) The Mediator will maintain the confidentiality of all written and verbal communications in the Mediation unless required to disclose by a court of competent jurisdiction.
- 20) Each Party or representative who signs this Agreement to Mediate warrants that the persons attending with them and/or on its behalf at the Mediation will be bound by and will observe the agreement set out in clause 18 above.
- 21) All information, whether or not in writing, arising out of or in connection with the Mediation shall be without prejudice and privileged and not admissible as evidence or

disclosable in any current or future litigation or other proceedings whatsoever. This does not apply to any information which would apart from this clause be admissible or disclosable in such proceedings. Otherwise inadmissible evidence can only be used with the written consent of both Parties.

- 22) Paragraphs 18 and 21 shall not apply to the extent that disclosure is required by law.
- 23) None of the Parties shall call the Mediator as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever arising from or in connection with the dispute or any other matters in issue at the Mediation. In the event that a subpoena, witness summons or other request is made to require the Mediator or Assistant Mediator to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings the Party making that request, whether or not that request is successful, hereby agrees to pay the Mediator for any time incurred in responding to such request at the daily rate plus VAT (or proportion thereof) or such other hourly rate as the Mediator may then usually charge together with any disbursements and travel expenses (including advocate's fees) that the Mediator may incur in seeking to resist being called as a witness.
- 24) In the event of the Mediation proceeding remotely online then:
- a) The Mediator and participants will not create any electronic video or audio recording of the Mediation except with the written consent of both Parties;
 - b) The Mediator and participants will not make or allow any live or deferred video or audio relay of the Mediation to others except with the written consent of both Parties;
 - c) Only the participants to the Mediation, the Mediator and anybody agreed in advance (e.g. participants' lawyers) will be present in the room used by each participant during any mediation session and all Parties present at each station shall be within camera view throughout the Mediation.

Costs

- 25) The Parties will have paid the Mediator's fees for the Mediation but in any event, but each Party will bear their own legal costs unless otherwise agreed at the Mediation. Whether or not a settlement is reached at the Mediation, each Party's legal costs of attendance will be treated as costs in the cause by the court.

Ending the Mediation

- 26) The Mediator or either of the Parties, after canvassing their intentions with the Mediator, may end the Mediation at any time without giving a reason.

Legal status and effect of the Mediation

- 27) This Agreement is governed by the law of the Republic of South Africa and the courts of the Republic of South Africa shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

We agree to the above terms and conditions

(a) Party At
Address
.....
.....
Signed
Dated.....

(b) Party B
Address
.....
.....
Signed
Dated.....

(c) Mediator
Signed
Dated.....

SPECIMEN NOTICE IN TERMS OF MEDIATION RULE 41A SUB-RULE (7)(a) OF THE HIGH COURT

This Specimen Notice is for guidance only. It should be adapted to the particular circumstances and legal requirements of the dispute to which it relates. Wherever possible any such Notice should be drafted/approved by each party's lawyer. Although the mediator may be involved in helping the parties to draft acceptable terms, the mediator is not responsible for the drafting of the Notice and should never be a party to the notice.

NOTICE IN TERMS OF RULE 41A SUB-RULE (7)(a)

COURT:FILE NO:

PARTIES:

.....Claimant

And

.....Respondent

The Claimant and Respondent in this matter confirm that the Mediation process that took place on has been completed.

SIGNED AT ON

WITNESS:

1.....

CLAIMANT

2.....PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/resolution)

WITNESS:

1.....

RESPONDENT

2.....PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/resolution)

SPECIMEN JOINT MINUTE IN TERMS OF MEDIATION RULE 41A SUB-RULE (8)(b) AND (c) OF THE HIGH COURT

This Specimen Joint Minute is for guidance only. It should be adapted to the particular circumstances and legal requirements of the dispute to which it relates. Wherever possible any such Joint Minute should be drafted/approved by each party's lawyer. Although the mediator may be involved in helping the parties to draft acceptable terms, the mediator is not responsible for the drafting of the Joint Minute and should never be a party to joint minute.

JOINT MINUTE IN TERMS OF RULE 41A SUB-RULE (8)(b) and (c)

COURT: FILE NO:

PARTIES:

..... Claimant

And

..... Respondent

The Claimant and Respondent in this matter confirm that the Mediation process that took place on has been completed.

They confirm that (no, full or partial) settlement was reached.

In the event of agreement, they confirm that the issues upon which agreement was reached and which do not require hearing by the court are as follows:

.....

SIGNED AT ON

WITNESS:

1.....

CLAIMANT
 2..... PERSONAL CAPACITY/
 DULY AUTHORISED
 (Attach copy of authority/resolution)

WITNESS:

1.....

2.....RESPONDENT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/resolution)

SPECIMEN SETTLEMENT AGREEMENT IN TERMS OF MEDIATION RULE 41A SUB-RULE (8)(e) OF THE HIGH COURT

In the event of a settlement the lawyers could use Form 14, J 628 (Rule 82) to record their settlement and submit it to the Court so that it is made an order of court. This ensures the enforceability of the agreement and confirms that the legal proceedings are settled fully and finally (if that is the case).

This Specimen Settlement Agreement is for guidance only. Any agreement based on it will need to be adapted to the particular circumstances and legal requirements of the settlement to which it relates. Wherever possible any such agreement should be drafted/approved by each party's lawyer. Although the mediator may be involved in helping the parties to draft acceptable terms, the mediator is not responsible for the drafting of the agreement and should never be a party to the agreement.



REPUBLIC OF SOUTH AFRICA¹

FORM 14
(Rule 82)

SETTLEMENT AGREEMENT

COURT:FILE NO:

PARTIES:

.....Claimant

And

.....Respondent

Whereas the parties referred their dispute to mediation;

And whereas the parties have settled the dispute between them with the assistance of the mediator; And whereas the parties hereby record the terms and conditions of the settlement;

Now therefore it is agreed as follows:

1. TERMS OF SETTLEMENT

.....

.....

.....

.....

.....

.....

.....

.....

2. **AUTHORITY TO ENTER INTO SETTLEMENT**
Each person signing this agreement in a representative capacity warrants that he or she has full authority to bind his or her principal to this agreement.
3. **CONSENT TO JUDGMENT**
The Claimant/Respondent agrees that in the event of failure to comply with any term of this agreement, the Claimant/Respondent shall be entitled to lodge with the clerk/registrar of the court the written Consent to Judgment signed by the Claimant/Respondent and obtain judgment in accordance with the provisions of section 58 of the Magistrates' Courts Act 32/1944.
4. **NON-PAYMENT**
Should any amount payable in terms of this agreement not be paid on the due date the full amount outstanding shall immediately become due, owing and payable.
5. **CONFIDENTIALITY**
 1. It is understood between the parties and the mediator that the mediation will be strictly confidential and without prejudice.
 2. Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding, unless such information is discoverable in terms of the normal rules of court. Only a mediated agreement, signed by the parties may be so admissible.
 3. The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties.
 4. The parties understand the mediator has an ethical responsibility to break confidentiality if s/he suspects another person may be in danger of harm.
6. **ORDER OF COURT**
The parties agree that this settlement agreement is/is not forthwith to be made an order of court.
5. **BREACH**
In the event that this agreement has not been made an order of court and any party breaching the agreement, the aggrieved party will be entitled to make application to court to make this agreement an order of court and to enforce the terms of hereof.
6. **NON-VARIATION AND WAIVER**
The parties agree that any amendment, waiver or variation of any term of this agreement must be in writing and signed by all parties.

SIGNED AT ON

WITNESS:

1.....

2.....CLAIMANT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/resolution)

WITNESS:

1.....

2.....RESPONDENT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/resolution)

ALTERNATIVE SPECIMEN SETTLEMENT AGREEMENT IN TERMS OF MEDIATION RULE 41A SUB-RULE (8)(e) OF THE HIGH COURT

This specimen Settlement Agreement is for guidance only. Any agreement based on it will need to be adapted to the particular circumstances and legal requirements of the settlement to which it relates. Wherever possible any such agreement should be drafted/approved by each party's lawyer. Although the mediator may be involved in helping the parties to draft acceptable terms, the mediator is not responsible for the drafting of the agreement and should never be a party to the agreement.

SETTLEMENT AGREEMENT

Date

Parties

..... (Party A)

Address.....

.....(Party B)

Address.....

.....(Party C, etc)

(jointly '**the Parties**')

Background

- The Parties have been in a dispute in relation to [set out brief details] ('the Dispute') [as per court reference] ('the Matter')]
- The Dispute has been the subject of a mediation ('the Mediation') conducted under an agreement ('the Agreement to Mediate') between the Parties and [.....] ('the Mediator');

- The Parties have agreed to settle the Dispute on the terms set out below ('the Settlement Agreement').

Terms of the Settlement Agreement

It is agreed as follows:

1. [A will to/for B at by not later than [time] on [date]]
2. [B will pay R to A by not later than [time] on [date] by electronic bank transfer to [bank]..... [branch code]..... [account number]]
3. [Any other terms]
4.
 - a. The Matter will be stayed and the parties will consent to it being made an order of Court.
 - b. **OR** [A/B] will discontinue the Matter on [B/A]'s undertaking not to claim [B/A]'s costs of the Matter against [A/B].
 - c. **OR** Judgment will be entered for [A/B] on their [counter] claim with an order that [B/A] pay [A/B]'s costs on the standard/indemnity basis subject to detailed assessment if not agreed.
 - d. **OR** The Matter will be dismissed with no order as to costs.
5. This Agreement is in full and final settlement of any causes of action whatsoever which the Parties [and any subsidiaries of the Parties] have against each other *[it is important that such a clause is only included after a careful check has been made as to whether there are any other possible outstanding causes of action between the Parties which can safely be compromised (or ought not to be compromised) in this way]*.
6. This agreement supersedes all previous agreements between the parties [in respect of all matters relevant to the Dispute] except for those terms of the Agreement to Mediate of continuing effect including the confidentiality of the mediation process, the Parties' undertaking not to call the mediator to give evidence and the liability of the Mediator.
7. If any dispute arises out of this Agreement, the Parties will attempt to settle it by mediation before resorting to any other means of dispute resolution. To initiate any such mediation a Party must give notice in writing to the Mediator. Insofar as possible the terms of the Agreement to Mediate will apply to any such further mediation. If no legally binding settlement of such a dispute is reached within [28] days from the date of the notice to the Mediator, either party may [institute court proceedings/refer the dispute to arbitration under the rules of the Arbitration Act 1965 (Act No. 42 of 1965)].

8. The Parties will keep confidential and not use for any collateral or ulterior purpose the terms of this Agreement except insofar as is necessary to implement and enforce any of its terms or as otherwise agreed in writing by the Parties.
9. The Parties acknowledged that any agreement reached in Mediation is done without any influence from the Mediator.
10. This Agreement shall be governed by, construed and take effect in accordance with South African law. The courts of South Africa shall have exclusive jurisdiction to decide any claim, dispute or matter of difference which may arise out of, or in connection with this agreement.

Signed

.....
for and on behalf
of.....

.....
for and on behalf
of.....

.....