



**SAMLA-UCT Series Of Practical Training Workshops in  
Medico-Legal Practice**

**WORKSHOP 5 - MEDIATION (16 Nov 2019 to 30 Nov 2019)**

**LEARNING OUTCOME STATEMENT**

- a) The intention of the workshop is to train medico-legal practitioners to understand the nature and benefits of mediation in the resolution of medical disputes; to understand how all decision-making is guided by ethical principles; and to understand the essential differences between mediation and litigation.
- b) The training will be relevant to different groups of practitioners, as follows : -
  - i) Mediators - how to conduct the mediation of medical disputes, in both clinical negligence and personal injury matters.
  - ii) Lawyers – how and why to refer clients to mediation, and the role to be played by legal representatives in the mediation process.
  - iii) Expert witnesses – how to provide relevant, factual and explanatory reports to assist mediation processes and to understand the similarities and differences between a report for mediation and a report for litigation.
- c) The training will include lectures, interactive discussions, a mock mediation demonstration, a golden thread lecture on the ethics of mediation/litigation; and an assignment to write an anonymised mediation case study, based on an actual clinical negligence dispute or personal injury dispute.

## **WORKSHOP FACULTY (MEDICAL MEDIATION)**

Judge Neels Claassen (Chairperson) – Prof Ethelwynn Stellenberg (Golden Thread Lecture) – Judge Roland Sutherland – Ms Susan Verhoef – Mr Johan Jordaan – Dr Herman Edeling – Adv Jacques Joubert – Adv Reshma Athmaram – Mr Trevor Reynolds – Ms Carina Van De Wall (Mock Mediation Director) – Ms Anina Van De Wall – Dr Henry Lerm – Dr Gavin Fredericks – Ms Irana Singh – Dr Cornel Lombaard – Dr Malan Van Rensburg – Dr Pierre Davis.

## **PROGRAM FOR DAY 1 - 16 NOVEMBER 2019**

*07:45 – 08:30. Registration, refreshments and connectivity.*

**08:30 – 09:30. Opening – Introduction to Medical Mediation – Benefits of Mediation over Litigation of Medical Disputes – Experience in South Africa.** Judge Neels Claassen. (Lecture ± 45 min – Discussion ± 15 min.)

**09:30 – 09:45. Medical Mediation Infomercial.** Ms Susan Verhoef.

**09:45 – 10:30. Pre-Mediation Meetings – SAMLA Protocol.** Mr Johan Jordaan. (Lecture ± 30 min – Discussion ± 15 min).

*10:30 – 11:00. Refreshment break.*

**11:00 – 11:45. The Role of Medical Mediators.** Dr Herman Edeling. (Lecture ± 30 min – Discussion ± 15 min).

**11:45 – 12:30. The Role of Legal Representatives (including the Concluding Agreement).** Adv Jacques Joubert. (Lecture ± 30 min – Discussion ± 15 min).

**12:30 – 13:15. The Role of Expert Witnesses.** Dr Herman Edeling. (Lecture ± 30 min – Discussion ± 15 min).

*13:15 – 14:00. Lunch break.*

*14:00 – 14:15. Check in and connectivity.*

14:15 – 15:00. **KZN Mediation Group.** Adv Reshma Athmaram. (Lecture ± 30 min – Discussion ± 15 min).

15:00 – 15:45. **The Art of Managing Conflict in Mediation.** Mr Trevor Reynolds. (Lecture ± 30 min – Discussion ± 15 min).

15:45 – 16:45. **Golden Thread Lecture – Ethics of Mediation & Litigation.** Prof Ethelwynn Stellenberg. (Lecture ± 45 min – Discussion ± 15 min.)

16:45 – 17:30. **Assignments and Closure.** Dr Herman Edeling.

## **SYNDICATE ASSIGNMENTS**

Write an anonymised Medical Mediation Case Study, based on an actual Clinical Negligence Dispute OR Personal Injury Dispute.

The study may be based on : -

- A. A relatively simple dispute – dealing with merits and quantum. OR
  
- B. A complex dispute – dealing with merits (negligence and causation) only. OR
  
- C. A complex dispute – dealing with quantum only.

The case study, in 3000 words or less, should include : -

- A. Summarised facts for each of sections 1, 2, 3 and 4. These may be in telegraphic format if necessary. AND
  
- B. Sections 5, 6 and 7 should demonstrate logical application of your mind to the facts of the case and the principles of mediation.
  1. Common information – factual background known to both parties.

2. Evidence of the Plaintiff.
3. Evidence of the Defendant.
4. Summary of relevant findings of each expert witness.
5. Questions put by the mediator to each party – and their answers.
6. The outcome of private discussions between each party and their legal representatives.
7. The final agreement reached in mediation.

## **PROGRAM FOR DAY 2 - 30 NOVEMBER 2019**

*07:45 – 08:30. Registration, refreshments and connectivity.*

**08:30 – 09:30. Report Back From Syndicates.** Judge Neels Claassen and Syndicate Leaders.

**09:30 – 11:15. Part 1 - Mock Mediation – CP Judgment – AD (and obo KLO) KZN MEC.** Ms Carina Van De Wall and Panel of Role-Players.

*11:15 – 11:40. Refreshment break.*

**11:45 – 13:00. Role of Medical Mediation in Judicial Case Management – Rule 41A.** Judge Roland Sutherland. (Lecture with Interactive Discussion).

*13:00 – 13:45. Lunch break.*

*13:45 – 14:00. Check in and connectivity.*

**14:00 – 15:00. SAMLA AGM.** Judge Neels Claassen. (NB – Online voting).

15:00 – 17:00. **Part 2 - Mock Mediation – CP Judgment – AD (and obo KLO) KZN MEC.**  
Ms Carina Van De Wall and Panel of Role-Players.

17:00 – 17:30. **Summary of Learning Points and Closure.** Judge Roland Sutherland.