

RULES OF MEDIATION

The purpose of these rules is to assist you in reaching a settlement of the issues submitted for mediation. The rules and guidelines are necessary to protect the integrity and confidentiality of the mediation process.

Agreement to Begin Mediation. These rules will be a part of your mediated agreement as outlined in your signed Agreement to Mediate. You will be asked to sign an Agreement before mediation.

Prerequisites for Mediation. If you have some concerns about whether mediation is appropriate for you, or whether you and your spouse/co-parent can fulfill these requirements, please discuss these concerns with the Mediator, either before or during the mediation process.

- Each person can make a decision to enter mediation freely and without coercion.
- Each person enters mediation with informed consent. Informed consent means that each person has had the opportunity to learn about mediation, its pro and cons, and alternatives to it.
- Each person can provide full disclosure without being afraid or endangered.
- Each person is aware that he or she can withdraw at anytime and feels they can do so without retribution.
- Each person is able to recognize that the other person has rights and needs separate from his or her own.
- Each person is able to recognize that all mediated outcomes must be agreed upon voluntarily by both participants.
- Neither person is cognitively or emotionally impaired (i.e; severe depression) in any way that affects capacity to mediate.
- Neither person lacks capacity due to drug or alcohol abuse.

Conduct of the Mediation Sessions Mediation is a process in which you have the opportunity to listen and talk with each other, share information, consider each other's perspectives, and make voluntary informed decisions, with the assistance and support of an impartial mediator.

The mediation process will be conducted to permit full discussion and resolution of the issues. The Mediator will assist you in fully discussing and understanding each issue before agreements are made so that you will arrive at solutions that are fair and equitable for you and for the other participant in mediation.

Although the mediator recommends that each person educate himself or herself about the legal approach to divorce, separation, custody, or child support, equitable distribution or any other family related issues, the mediator will encourage you to discuss and negotiate a settlement based upon your own standards of fairness and your decisions about what is best for you and your family.

The Mediator understands and expects that emotions may run high at points during the mediation process. You are asked in this Agreement to agree to do your best to stay with the process and to continue to discuss your needs and concerns until the Mediator fully understands what is going on and why you and/or the other participant are feeling the way you are feeling.

You will have ample amounts of time to be heard. The Mediator asks that you agree to use your best efforts to commit to the process, to express yourself fully and honestly, and not to withdraw physically or emotionally during the process. If at any point you need a break, or want to end the session for the day, because you are having trouble staying with the process, that is perfectly normal and understandable. Please feel free to communicate that need to the Mediator.

You agree to use your best efforts to listen to each other, with the acknowledgement that you may understand the other's point of view without agreeing to it.

Notes. During the mediation sessions, the Mediator will take notes, recording what you are saying and what you have said. The Mediator uses these notes primarily as a device to help her to hear and listen more accurately. She is not drawing conclusions about you or about what you are saying, but is primarily recording your statements.

The purpose of these notes is for the Mediator to accurately remember what you have said, as you are saying it, and also so that she can accurately record any items on which agreements are reached.

Once a final settlement agreement has been written, the Mediator's practice is to destroy these notes, so that only the final agreement remains in the file.

Full disclosure. You fully agree to disclose to each other and to the Mediator all information and writings as requested by the Mediator, including financial statements, income tax returns, and all information requested by the other participant if the Mediator finds that disclosure is appropriate to the mediation process and could aid you in reaching a settlement.

At the conclusion of the mediation process, you will find that your attorney or your spouse/partner's attorney may request further verification and disclosure in order to aid the review and implementation of their decisions you have made in mediation, and you agree to provide information in response to the request of the other. In addition, at the conclusion of the mediation, you agree that you will sign a verified (notarized) statement declaring that you have fully and truthfully disclosed all information concerning assets, liabilities, and income if so requested by the mediator or the other participant.

You should be aware that failure to honestly and fully disclose information relied upon in mediation could invalidate and/or void agreements reached in mediation.

Participation of Children and Others. Children of sufficient age or other people having a direct interest in the mediation may participate in mediation sessions related to their issues if the participants and the Mediator consent.

Prohibition Against Transfers of Property, Change or Cancellation of Insurance, or any Action That Changes the Marital Estate.

Upon beginning mediation, you agree that you will not engage in transactions which materially affect or could affect the current status quo of the existing marital estate, including (but not limited to) transactions which affect retirement assets, real estate, cash accounts, or vehicles. You agree that transfers or sale of property without the written agreement of the other participant is prohibited, except in the usual course of meeting ordinary monthly obligations. You agree not to cancel or change health insurance, life insurance or other benefits, or to change beneficiary designations on insurance or retirement assets, without first disclosure and discussing such changes.

Drafting of Agreement. At the conclusion of the mediation sessions, if appropriate, and if you both want him/her to, the Mediator may draft a detailed agreement setting forth the decisions agreed upon by you in mediation, and background and factual information you relied upon to reach agreement. This agreement is called a Memorandum of Understanding (MOU) and it is not legally enforceable in court. If you so choose, you will give the draft Agreement to your attorney for review. Any new or omitted issue raised by the attorneys will be returned to mediation for additional discussion and negotiation, if you cannot quickly resolve them. In order for your agreement to be

binding, an attorney must take your MOU and create a separation or divorce settlement agreement.

Legal Representation. The Mediator does not legally represent either of you and is acting only as a mediator in this matter.

Although the Mediator recommends that each of you educate yourself about the legal rights in divorce, the Mediator will encourage both of you to discuss and negotiate a settlement based upon your own standards of fairness and your own decisions about what is best for yourselves and your family. You have the right not to consult with counsel if that is your desire to avoid attorneys, or to conserve time and resources.

If you retain an attorney at the end of the mediation process to review the Agreement, you will protect the Agreement from legal challenge at a later time. If you retain legal representation at the beginning of the mediation process, you will have a better understanding of your legal rights and responsibilities and will less likely be surprised by legal issues or concerns raised by attorneys, after believing that all decisions have been finalized.

Separation Agreement or Uncontested Divorce. Ms. Bernstein is also an attorney licensed in the state of New York. In order for Ms. Bernstein to prepare your separation agreement or uncontested divorce the clients must execute a separate attorney retainer agreement with Ms. Bernstein. Ms. Bernstein will assist the clients in drafting the agreement and filing the uncontested papers in court and will not represent any of the parties individually.

Scheduling of Sessions and Starting Times. Your appointment has been reserved exclusively for you. If you schedule an appointment, no one else can make an

appointment for that time. Therefore, if you need to change the scheduled appointment, you are requested to do so at least 24 hours in advance. Failure to do this will result in a charge of one hour's fee for the cancelled session. All appointments are made with the consultant mediator assigned to your matter.

In-session mediation time will be billed beginning at the time that the session is scheduled to begin, unless the delay in start time is attributable to the Mediator.

Hourly fees and Administrative Charges. In addition to hourly charges for the mediation sessions, you will be charged the hourly rate for the Mediator's work outside of the mediator's sessions, whether the preparation of the mediated settlement agreement or for discussions with you, your counsel, or with other persons concerning matters related to mediation. You will also be charged for any long-distanced telephone calls associated with your case, any for any necessary word processing work. Photocopying above that normally required with a typical mediation case will also be charged to you. Charges will be billed to you on an on-going basis with payment due prior to the commencement of the next mediation session.

Disagreements. Should any disagreements arise between either participant and the Ms. Bernstein concerning fees or charges, and Ms. Bernstein may resort to any and all legal remedies available. You shall be responsible for all costs incurred as a result of Ms. Bernstein's attempt to collect amounts past due, including attorney's fees, court costs, other collection expenses, and fees for the Mediator's time spent on collection attempts.

Phone Calls and Emails . Ms. Bernstein will bill the regularly hourly rate for time spent on telephone calls, other than calls to schedule a mediation session, and for time spent reading and answering emails. An agreement cannot be reached until all

participants have completed the process of understanding the situation and have come to terms with all elements of the agreement. If it is important for one participant to have a telephone conversation with the Mediator between sessions, this is part of the process necessary toward achieving the agreement. The Mediator will do her best to assist the person calling to find a way to share the information with the other participant and in raising these issues in a joint meeting. The time spent on the phone or on email with either of you shall be billed at Ms. Bernstein's hourly rate to the person or people who have agreed to pay the fees for Mediation.

Safety. Participant's are encouraged to discuss with the Mediator, either in session or in private, any concerns related to either your physical or emotional safety and well-being as it relates to the mediation process.

Confidentiality of the Mediation Sessions. Laws and court rules say that all communications, documents and work notes made or used in mediation are privileged and must remain confidential. In addition, you agree with each other and with the Mediator to keep the mediation discussions and documents confidential. By signing the agreement to Mediate, incorporating these rules and guidelines, you agree as follows:

- 1.** You will not call the Mediator as a witness in any litigation of any kind, or for any deposition, regarding the mediation process. You will not require the production of the Mediator's records or documents or any other notes or papers made by the Mediator for any purposes associated with litigation of any issue dealt with in mediation.
- 2.** These exclusions from evidence and exemptions of the Mediator and participants from giving testimony or being called upon to produce documents shall also apply to

the use of neutral experts and other professionals called upon by the participants in mediation.

- 3.** Mediation conducted by a professional mediator shall come within the purview of his/her professional privilege as established by the Academy of Family Mediators, the Association for Conflict Resolution, the Model Standards of Practice for Family and Divorce Mediators adopted by the ABA in April 2001, and any other statutory protection enacted either before or after the commencement of mediation by the participants.
- 4.** If the Mediator is called or subpoenaed as a witness for any future court proceeding and asked for information about this mediation, you agree you shall be responsible for fee's for the Mediator's time, at the Mediator's hourly rate, which shall include any time involved in defending against the subpoena, preparing documents, retrieving documents, answering or appearing as a result of the subpoena, as well as attorney fees incurred by the connection of such requests.
- 5.** Finally, you understand that after signing a full Settlement or Separation Agreement, or upon closing of a file which does not end with a full agreement, the Mediator routinely shreds all notes from the mediation sessions and other records, from your file.

Each participant acknowledges that they have read this agreement in its entirety and fully understands the contents of the Rules of Mediation.

Dated:

Dated:

Participant

Participant

