

## **AGREEMENT TO MEDIATE**

### **The Mediation Process**

Mediation is a voluntary process by which a neutral third party assists you in reaching a mutually acceptable agreement as to the issues of visitation and custody of your child(ren), and/or the division of property. My role as your mediator will be to assist you in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and finding points of agreement -- not in telling you how you should resolve those issues. Any agreement reached by you can resolve all or only some of the disputed issues.

### **Legal Counsel and Legal Advice**

As a mediator, I am not acting as an attorney and will not under any circumstances give legal advice to either party. Both parties are advised to seek their own legal counsel at any time during the mediation proceeding.

A mediator may give legal information to both parties as may be necessary for the parties to make informed decisions. However, the mediator cannot give either party legal advice.

Both parties acknowledge and agree that they have advised their attorneys, if any, that they are engaged in the mediation process. Both parties acknowledge that is their obligation to communicate with their attorneys concerning any agreements reached in mediation and not the mediator's responsibility.

Each of the parties is encouraged to seek the advice of independent and separate counsel at any time during the mediation process with regard to his or her individual legal rights and responsibilities.

Each of the parties is requested to seek the advice of independent and separate legal counsel prior to signing any formal separation agreement prepared by an attorney who purports to incorporate the Memorandum of Understanding the parties have designed.

The parties agree that no legal action of any kind will be taken by either of them during the course of mediation, except with the express agreement of the other party and the mediator. Further, if either or both parties have retained counsel prior to mediation, he or she shall be obligated to direct his or her attorney in writing that no action is to be taken on his or her case while the matter is in mediation.

Although the mediator is a licensed Kansas attorney, he/she cannot give legal advice to any participant and he/she cannot represent either or both of them in their marital dissolution or child custody issues.

### **Communications with the Mediator**

The parties will not communicate or meet with the mediator concerning matters in mediation except in the presence of each other during a mediation session unless the parties expressly

agree beforehand that communication between the mediator and an individual party may be helpful and appropriate in reaching settlement.

### **Third Party Involvement**

To facilitate the mediation process, the parties shall refrain from discussing the matters in mediation with friends, relatives or others. However, you are encouraged to consult with legal counsel at any time and to consult with mental health professionals or clergy as you may find helpful.

### **Full Disclosure**

Each party shall fully and completely disclose in good faith to the other party and the mediator all financial assets and liabilities, including but not limited to, all account statements and information, such as financial statements, income tax returns, pension and/or profit-sharing plans, or any other documentation. Such disclosure shall include all employee related benefits and shall also include assets that may not have any current value, but may have value in the future, e.g. a stock option. Mediation cannot proceed to completion without these disclosures being made by both parties.

The preparation of budgets and financial statements by each party is an essential part of the mediation process. If either party shall fail or refuse to prepare the documents, the mediator may suspend or terminate the mediation process.

The mediator is not an accountant and any spreadsheet prepared by the mediator is for discussion or illustrative purposes only and may not be relied upon as a substitute for the parties doing the appropriate accounting work themselves or retaining an accountant or attorney to do it for them. The mediator does not do any independent financial review, valuation, or analysis of the information supplied by the parties. If either party believes assets have not been fully or fairly disclosed, it is their responsibility to terminate mediation and seek independent counsel. The parties are encouraged to obtain their own independent appraisals and valuations if they are uncertain as to the value of any asset they own.

Both parties have been an opportunity to disclose to the mediator any conditions which may make mediation difficult, including but not limited to abuse, addictions, language barriers, or physical or mental disabilities. Both parties acknowledge that they had an opportunity to complete a mediation screening and if they have not completed the form, it is because there are no issues which in their opinion might make mediation difficult or ill-advised.

### **Transfers of Property During Mediation**

During the mediation process neither of the parties shall transfer, encumber, conceal, sell or in any other way dispose of any tangible or intangible property except in the usual course of business or for the necessities of life. In addition, transfers by either party outside regular monthly expenses shall be disclosed prior to expenditure.

## **Termination**

Any participant or the mediator may terminate mediation at any time, except when the mediation is court-ordered pursuant to the corresponding Kansas or Missouri statutes, in which case the participants may terminate the mediation at any time after the required time.

The mediator will terminate the mediation whenever the mediator believes that: (a) continuation of the process would harm or prejudice one or more of the parties or the children; (b) the ability or willingness of any participant to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely; (c) the participants' interests are so complex and difficult that the participants cannot prudently reach an agreement without legal or other expert assistance; (d) there is a known or potential conflict of interest on the part of the mediator which would affect the mediator's impartiality; (e) there has not been a fair and full disclosure of all relevant information; (f) the mediator must terminate the mediation to report suspected child abuse; (g) in the mediator's professional judgment the agreement does or will involve overreaching, duress, or unfairness; or, (h) the continuation of the process would harm a participant or the proposed agreement does not protect the best interests of the children.

## **Confidentiality**

Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. By signing this agreement, the parties are waiving the right to subpoena or otherwise compel the mediator or the mediator's agent to disclose any matter disclosed in the process of setting up or conducting the mediation.

Unless the document specifically states to the contrary and is signed by all parties to the mediation, no document prepared for the purpose of, or in the course of, or pursuant to mediation, or a copy of any such document shall be admitted into evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

Evidence may be admitted if all persons involved in the mediation consent to its disclosure.

All communications between each participant and the mediator shall be confidential and, in the event of litigation regarding custody or visitation with the children of the participants or any other matters discussed with the mediator, neither participant shall call or cause anyone else to call the mediator as a witness or subpoena his/her records.

If mediation has been court-ordered, the mediator shall report a termination of the mediation to the court, but will not state the reason for termination except when the termination of the mediation is due to a conflict of interest or bias on the part of the mediator.

If subpoenaed or otherwise notified to testify, the mediator will inform the participants immediately so as to afford them an opportunity to quash the process.

The participants understand that mediators have imposed upon them by Kansas Statutes Annotated 38-1522, and amendments thereto, certain obligations concerning the disclosure and reporting of child abuse and neglect. If during the mediation process a matter comes to the mediator's attention which he/she believes he/she is obligated by law to report to any agency or authority, nothing contained herein shall prohibit him/her from making such a report or disclosure. Pursuant to Kansas and Missouri law, the mediator is further obligated to report the commission of a crime during the mediation process or an expressed intent to commit a crime in the future, and nothing herein shall prevent the reporting of such crimes or expressed intents. The participants hereby agree to release and hold the mediator harmless from any damage they may suffer as a result of such disclosures.

### **Mediation Fees**

The parties understand that, unless a different fee is agreed upon in writing, the mediator charges \$350 per hour (not per party). Payment of a retainer, in an amount to be agreed upon, must be paid and returned with a signed copy of this Agreement at or before your first scheduled mediation session. The retainer is only an estimate of the fees. Your account must be paid in full before the divorce or other applicable mediation process is completed. The fees for divorce do not include any cost you might incur or be charged to transfer assets after the divorce is approved by the court, which would include the cost of Qualified Domestic Relations Orders or QDRO's. We do not charge you for cancelled appointments as long as the cancellation is with at least 24 hours of notice. Travel time is charged at ½ of normal hourly rates. If we don't receive such notice, you will be charged for one hour of time (\$350 dollars). Please note, however, even with notice, we do charge a small amount (approximately .15 of an hour) for the time involved in rescheduling your appointment for you. If the appointment is rescheduled at our request, there is, of course, no charge.

Unless another agreement is reached in mediation, the parties agree to evenly divide the costs of mediation. The mediator cannot and does not attempt to allocate the cost of mediation on any other basis, e.g. "my spouse called you, I didn't, therefore let him (or her) pay for that cost."

Failure to pay mediation fees as directed above will result in a termination of the mediation process. The parties agree that they will pay for mediation (beyond the retainer amount) at the time it is scheduled. If mediator is forced to file any action to collect fees, the cost of collection shall also be borne by the parties.

### **Mediator Communication with Attorneys**

The parties give the mediator permission to communicate with our attorneys to discuss the status of mediation.

### **File**

The parties grant permission to the mediator to destroy their file once an entry of a Decree of Divorce has been made. The parties understand that it is their responsibility to seek the return of any copies they may want before the case is terminated. For this reason, no originals should

be given to the mediator and each party should maintain their own files and records and not rely on the mediator to do so.

**CLIENT’S EXPRESS CONSENT TO COMMUNICATION VIA INTERNET:**

Please be advised that email may not be private or secure, such that Attorney will not guarantee that any communications via the Internet are privileged or secure. If the client chooses to communicate via the Internet, then the client assumes the risk of such communication. By signing below, the client is giving express permission to the use of the internet as a form of attorney/client privileged communication. Any revocation of permission to use the internet for such forms of attorney/client privileged communication, including fee invoices, needs to be in writing addressed to Attorney at the address above.

**Internet Communication :**

\_\_\_\_ (initial if you agree to receive communications by email)

Approved email address(es): \_\_\_\_\_

\_\_\_\_ (initial if you agree to receive communications by email)

Approved email address(es): \_\_\_\_\_

PARTICIPANTS \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

MEDIATOR \_\_\_\_\_ Date \_\_\_\_\_

GREGORY D. KINCAID