



## MEDIATION AGREEMENT AND GUIDELINES

Mediation is a non-adversarial process, which is most effective if the parties involved work within certain guidelines.

- A. Accept responsibility for yourself. Consider in advance and be able to state what you want and need. Accusations only hinder the process and are not relevant to the issues discussed in mediation. Include your intent, reasons and feelings. This helps facilitate the process.
- B. Mediation differs from litigation in that the parties, with the assistance of the mediator, reach their own agreement. Mediation allows the parties to make decisions for themselves. The mediator will lead the negotiations in assisting the parties to reach a decision which is acceptable to both. The mediator will not make decisions for the parties.
- C. The mediator cannot act as an attorney for either party either during the mediation process or after the mediation concludes. At the conclusion of the mediation sessions, a Memorandum of Understanding or a Settlement Agreement will be drafted to incorporate all issues agreed upon by the parties. Both parties are encouraged to have their own independent attorney during the mediation process for consultation and/or to review all legal documents. **The parties understand and agree that there exists no attorney-client relationship between the parties and the mediator or Arizona Mediation Institute, L.L.C.** Both parties are discouraged from signing any legal documents which have not been reviewed by their individual attorneys. Both parties are also encouraged to have their own accountants or tax advisors review the legal documents and the Memorandum of Understanding for tax ramifications. The mediator will not provide tax advice.
- D. The mediator will often negotiate with the parties in joint session; that is, with the parties together in the same room or during the same conference call. Communications with the mediator regarding issues under negotiation should generally be in the presence of both parties. However, there may also be times when the mediator uses a "caucus" format. A caucus is when the mediator speaks with each party separately – for clarification of issues or further negotiation. A party or the mediator may call for a caucus. A caucus might occur in person during a mediation session, or in a telephone call or e-mail prior to or after a mediation session. The caucus is a common occurrence in mediation and should cause you no concern.

The caucus is the only time during the mediation process that information could be confidential, unless the information is substantive to the process, which, of course must be shared. All information will be shared at the discretion of the mediator unless requested otherwise. If a party refuses to share substantive information, the mediator may terminate the mediation process. However, if you desire more clarification about the concept of a caucus, please discuss this with your mediator prior to signing the Mediation Agreement and Guidelines.

- E. By signing this Agreement, each of you is affirming that you will fully disclose all pertinent issues relating to the child(ren) (if any) and all income, assets and liabilities. Should either party fail to do so, the validity of any agreements reached could be questioned by the other party. You are further affirming that you will not hide, transfer or dispose of any real estate or other property during the mediation process without the consent of the other party, nor will you take any steps which would alienate either parent from the child(ren).
- F. The mediator has disclosed any conflicts he/she may have and the parties have waived any conflicts disclosed.
- G. The mediation process may be terminated (a) by the execution of a Memorandum of Understanding or Settlement Agreement by the parties; (b) by notice of the mediator that further efforts at mediation would not prove useful; or (c) by notice of either party that the mediation process is terminated.
- H. The mediation process is to be treated as confidential. Arizona law regarding confidentiality (but not attorney-client privilege) applies to your mediation process and session(s). Information gathered in the mediation process is confidential and privileged (but is not subject to attorney-client privilege), with the exception of any applicable reporting laws. These discussions will be considered settlement negotiations under applicable Rules of Evidence. The mediator will not willingly testify for, or against, either party involved should either party end the mediation process and litigate in court. By signing this Agreement, both parties agree not to subpoena the mediator or any agents of Arizona Mediation Institute, L.L.C., to testify concerning the mediation process or session(s) in any subsequent court actions. No evidence of anything said during the mediation session(s), or of anything prepared for the purpose of the mediation process, shall be admissible in court or subject to discovery unless all parties agree to the disclosure or the disclosure is required by law. The parties should be aware, however, that any evidence that exists independently of the mediation process, even if the evidence is used in connection with mediation session(s), is subject to service of process or subpoena. The rules of confidentiality apply to all communications between the participants before, during, and after the mediation session(s), except that the mediator has a legal duty to report certain situations, such as child abuse and neglect or danger to a party or a third party.

- I. Arizona Mediation Institute, L.L.C. is a training institution. From time to time, student mediators will sit in on the mediation session(s) as observers. Students have the same confidentiality mandate as do our mediators. If you object to a student mediator observing your mediation session(s), please so advise your mediator at the first session.
- J. Mediation sessions must be canceled seventy-two (72) hours in advance. If this is not done, the parties will be charged the full cost of the canceled session.
- K. Neither Arizona Mediation Institute, L.L.C. nor any mediator employed by Arizona Mediation Institute, L.L.C. shall be liable to any party for any act or omission in connection with the mediation of this matter.
- L. **Mediation sessions are to be paid for at the time of service. At the mediation session, you are required to provide a credit card number to secure your mediation fees. It is impossible to predict the exact amount of time a mediator may spend drafting documents or on other mediation-related work, such as telephone conferences, etc. All time spent by the mediator and/or the staff of Arizona Mediation Institute, L.L.C. in excess of the actual session will be billed according to the time spent and the fees set forth herein. All statements for services rendered are due by the tenth (10<sup>th</sup>) day of each month. Any outstanding balance not paid by the tenth (10<sup>th</sup>) day of each month will be charged to the credit card(s) you have provided to Arizona Mediation Institute, L.L.C. for this purpose. By executing this Agreement, you are authorizing those charges to be billed to your credit card.**
- M. The mediator, with the informed consent of both parties, may prepare the necessary documentation to initiate the process with the Court, as well as the documentation necessary to finalize the process. Any such documentation will be filed with the Court on behalf of the parties, with the express approval of both parties. The mediator will prepare these documents according to their understanding of the parties' agreements. Both parties are strongly encouraged to have their own independent attorneys review the documents. The preparation of any documents does not create an attorney-client relationship between the parties and the mediator or Arizona Mediation Institute, L.L.C. Both parties are strongly encouraged to have independent legal counsel review the documents.
- N. In the event a Qualified Domestic Relations Order ("QDRO") is needed to divide a qualified retirement or pension plan, the mediator will provide a list of attorneys from which the parties can choose an attorney to handle this part of the process as Arizona Mediation Institute, L.L.C. does not prepare QDROs.
- O. Mediation files are kept on site only as long as the parties are involved in mediation. Once a case has settled or mediation has terminated, the file is scanned and destroyed and retained electronically for one (1) year.

P. I have read and understand this Mediation Agreement and Guidelines. I understand Arizona Mediation Institute, L.L.C. does not provide legal, financial or tax advice. **I further understand that neither Arizona Mediation Institute, L.L.C. nor any of its members, agents or employees is my lawyer, and that there is no attorney-client relationship between Arizona Mediation Institute, L.L.C. or any of its members, agents or employees, and me.** I understand I have been directed and encouraged to seek independent legal counsel and tax advice. I further understand by signing this Agreement, I am agreeing to mediate, in good faith, with complete honesty and full disclosure, and am also agreeing I will not subpoena the mediator or any agents or employees of Arizona Mediation Institute, L.L.C. to testify in court in any court action.

(Party 1) \_\_\_\_\_ (DATE) \_\_\_\_\_

(Party 2) \_\_\_\_\_ (DATE) \_\_\_\_\_

The sum of \$ \_\_\_\_\_ was received this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to include the following:

\$ \_\_\_\_\_ For \_\_\_\_\_ hours of mediation;  
\$ \_\_\_\_\_ First hour of drafting documents;  
\$ \_\_\_\_\_ Filing Fees (\$376 for initial docs & \$287 for final docs); and  
\$ \_\_\_\_\_ Costs (\$250 flat fee).

RATES: Judith M. Wolf, Mediator \$675/hr  
Judge Bruce R. Cohen (ret.), Mediator \$675/hr  
Aris J. Gallios, Mediator \$500/hr  
Andi J. Paus, Mediator \$500/hr  
Steven M. Serrano, Mediator \$525/hr  
Michael J. Clonts, Mediator \$400/hr  
Mediation Assistants \$185/hr  
Time is billed in tenths of an hour. Partial increments are rounded to the next full tenth of an hour.

ARIZONA MEDIATION INSTITUTE, L.L.C.

By: \_\_\_\_\_