

BASIC GUIDELINES FOR A SUCCESSFUL MEDIATION

1. COMMUNICATION

- (a). **Meetings.** In mediation, the parties are choosing to work toward the resolution of issues in a series of meetings, which will include the parties, the mediator and/or other experts that the parties agree to include as part of the mediation. The parties will need to commit to meet regularly. They understand that the costs, in time and money, for their meetings may be substantial and requires everyone's cooperation to make the best use of available resources. Therefore, when they do meet, it is important that the parties come prepared, having done any homework assigned for that meeting. If homework cannot be completed prior to a scheduled meeting, it is best to inform all of the members of the group at least 48 hours before the meeting so that a decision can be made about whether or not to reschedule the meeting.
- (b). **Tone of Communication.** The parties' written and verbal communications needs to be respectful and constructive. They should not make accusations or claims which are punitive in nature. They need to try to avoid taking inflexible positions, understanding that the accommodation of each other's interests and the ability to compromise are essential to the success of the mediation.
- (c). **Focus of Communication.** The parties should not focus on the problems that may have contributed to the breakdown of the marital relationship but should focus instead on the issues that need to be resolved for both of them to move forward with their lives.
- (d). **Communication Without Criticism or Interruption.** To achieve a mutually agreeable settlement, the parties must be able to speak freely and express their respective interests, needs, desires and options without concern that they will be criticized or judged by the other. Each party should listen respectfully to the other's point of view and attempt to understand it even if they do not agree with it. They need to use their best efforts not to interrupt each other or any other participant during the meetings.
- (e). **Communication Outside the Mediation.** The parties should not pressure each other to discuss settlement issues outside of the Mediation meetings. An option is to agree in advance to discuss certain issues, such as the division of personal property or the children's schedules, as long as it is understood that the discussion will end if either party feels uncomfortable or pressured.

2. PRESERVATION OF THE STATUS QUO DURING THE MEDIATION

- (a). **Real or Personal Property.** The parties may choose to agree that during the mediation, they will not sell, transfer, borrow against, encumber, hypothecate, conceal, assign, remove, or in any way dispose of any property, real or personal, whether or not marital, individually or jointly held by them, without the written consent of the other, except in the usual course of business and consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with the mediation.
- (b). **Insurance Policies.** The parties may choose to agree that during the mediation, they will not borrow against, cancel, transfer, dispose of or change the beneficiaries of any insurance policy or other coverage including, but not limited to, life, disability, medical, hospitalization, dental, vision, prescription, optical, health, homeowner's, renter's or any other existing insurance policies held for the benefit of either of them or their minor children, without the written consent of the other.
- (c). **Debts.** The parties may choose to agree that during the mediation, they will not incur any debt or liability for which the other may be held responsible, including, but not limited to, further borrowing against any credit lines secured by the family residence, further encumbering of any asset, or using credit cards or cash advances, other than in the usual course of business and consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with this Mediation.

3. CAUTIONARY ACKNOWLEDGMENTS & COMMITMENTS.

The parties should acknowledge their understanding that mediation is a process designed to resolve legal issue arising from their separation or potential divorce. Mediation is not personal marriage counseling. And, the parties should understand there is no guarantee that they will be successful in resolving their case in the mediation.

- (a). **Vigorous Discussion.** The parties need to understand the mediation will involve vigorous good faith discussions.
- (b). **Compromise as Option.** Where there are differences as to what is important to each, the parties should each use best efforts to create proposals that meet the fundamental needs of both of them and, if necessary, to make the compromises needed to reach an acceptable agreement.

- (c). **Not a Panacea.** The parties need to understand that mediation may not eliminate concerns about any distrust and differences, which may exist between them.
- (d). **Need to Assert Interests.** Each party needs to understand that each is expected to assert his or her respective interests.
- (e). **Expectations Should be Realistic.** The parties need to understand that they should not lapse into a false sense of security that the mediation or the mediator will protect each of them. Each should and is encouraged to consult an attorney of his or her choosing for advice during and after mediation.
- (f). **Failure of the Mediation.** Each party needs to understand that mediation may fail for various reasons such as:
 - i. The mediator does not spend enough time educating the parties about mediation;
 - ii. The mediator, either party and/or any other experts the parties bring into the mediation fail to follow the expectations of clients and professionals (See #4) in conversations with each other in the mediation or outside the mediation;
 - iii. Either of the parties fail to follow temporary agreements they may make in mediation;
 - iv. Either of the parties fail to do tasks he or she has agreed to do in mediation;
 - v. Either of the parties take one sided actions during the mediation;
 - vi. Either of the parties dispose of property without the consent of the other;
 - vii. Either of the parties misrepresent or withholds information;
 - viii. Either of the parties fail to provide information when requested or fails to provide information needed to make decisions whether requested or not;
 - ix. Either of the parties fails to participate in the mediation in a spirit of good faith.

4. **EXPECTATIONS OF CLIENTS & PROFESSIONAL**

- (a). **Be respectful.** Be respectful to everyone in the meetings.
- (b). **Be informal in our sessions.** Use first names for each other and the professionals. Avoid “he” or “she”.

- (c). **Speak for yourself.** Use “I” statements. When you speak for yourself, you use “I”, “me” or “my”. When you speak for yourself, you take responsibility for what you say, and own your statements. This helps your messages be clear and easier for others to hear. Others will be more likely to accept what you say and less apt to discount your thoughts, feelings, and wants. For example:
- “I need more time to think about...”
- “Here are my thoughts on that question...”
- “Your understanding of this is helpful for me...”
- (d). **Listen without interruption.** You will listen better and hear more if you avoid going into your head to think up a response to what is being said. Instead, listen in order to understand. Try not to judge the person or his/her message. See if you can summarize what the other person has said. Ask questions about what you have heard. This will keep you from getting defensive and/or becoming reactive in the meetings. Each of you will have a chance to say what you need to say. This is one of the many benefits of the Collaborative practice.
- (e). **Avoid blaming.** Address the problems and concerns at hand without blaming. Stay away from “you” statements. “You” statements mean that you are speaking for others. This tends to stimulate defensiveness in others and resistance to what you say. Others may see this as an attempt on your part to control their thoughts, feelings, or wants. For example:
- “You think our children would be better off without...”
- “You always come across as arrogant and selfish.”
- “You have no intention...”
- “You never listen.”
- (f). **Avoid positions.** Problem-solve by looking at all the options. Be open to hear from your spouse and/or others about thoughts and concerns.
- “I want to be fair...I’d like to discuss...”
- “I feel resistant to what you’re saying, but I’m willing to hear you out and think about what you’ve said.”
- Let’s see if we can come up with a solution. Here’s my idea...”
- (g). **Best interests.** Think about what is in the best interests of your children and family. Work towards the most constructive agreement – one that is acceptable to you, your spouse, and your family.

- (h). **Complaints.** When you have a complaint, raise it as your concern, and, when possible, follow it up with a constructive suggestion as to how it might be resolved.
- (i). **Personal Concerns.** If something is not working for you, please tell your concern so it may be addressed. Ask the mediator if you do not understand something. If may be necessary to talk to your attorney about things you do not understand, so your attorney can clarify matters for you.
- (j). **Commitment to the Mediation.** Be willing to commit time to meet on a regular basis, if needed. Be prepared for each meeting.
- (k). **Patience.** Be patient with each other and the mediator. Delays in Mediation can happen even with everyone acting in good faith. Everyone is tempted to go straight to his or her own answers. It doesn't work. If it did, you wouldn't need professionals.
- (l). **Trust the mediation process.** Everyone is tempted to go straight to his or her own answers. It doesn't work. Following the mediation process is more likely to lead to mutually acceptable solutions that can sustain an amicable family relationship.

CHILDREN'S ISSUES

The parties need to recognize that their children may suffer as a result of their separation and potential divorce, and therefore should commit themselves to minimizing the trauma to and the disruption of their children's lives. To that end, they may choose to agree as follows:

- (m). **Settlement Issues Will Not Be Discussed in the Presence of the Parties' Children.** Communication with the children or in the children's presence or hearing, regarding settlement issues will occur only if it is appropriate and done by mutual agreement and/or with the advice of a neutral mental health professional.
- (n). **The Children will not be Interrogated.** The parties will not question the children about the other parent or the events occurring in his or her residence.
- (o). **The Children Will Not Be Placed in the Middle of The Parties' Disagreements.** The parties will not criticize each other to their children or in their presence, nor will they allow others to criticize the other when the children are present. They agree that their children shall not be forced to choose between them, and will encourage them to love both parents equally. Neither party will use the children as a messenger to deliver information to the other party.
- (p). **Access to the Children.** The parties will not attempt to impede access of the children to the other parent. The children shall have reasonable telephone access with both parents, and each parent will have reasonable telephone access to the children when they are not with them. They agree they will not deny access of the children to extended families, unless they specifically agree otherwise.
- (q). **Information Regarding the Children.** The parties will promptly inform the other parent of any accident, illness or other mishap involving the children. The parties will have equal access to records and information regarding their children's education, health, activities and general welfare.
- (r). **Removal from Area.** The parties will not remove, or threaten to remove, the children from the area, absent the explicit written consent of the other parent. However, they further agree that consent to such removal for vacations or other legitimate activities will not be unreasonably withheld.