



Family Law  
Mediation &  
Collaborative Divorce

## AGREEMENT TO MEDIATE

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

You agree to mediate certain issues or matters in question or in dispute, specifically with regard to:

\_\_\_\_\_

You request that Weber Dispute Resolution (“WDR”) provide mediation services. This Agreement confirms our understanding.

### 1. THE MEDIATOR’S RESPONSIBILITY:

1.1 The Mediator will aid and facilitate informed and consensual resolution of issues presented. We will work with you to assure you have sufficient information to make decisions. The Mediator has no authority to decide issues. We will not make a recommendation to any person or agency outside the mediation process.

1.3 While we offer information, we do not provide legal advice or legal representation to either of you at any time. **You are strongly encouraged to consult with your attorney at any time during the mediation process. You have a right to consult with your attorney prior to signing any legal documents.**

1.4 If we have any prior recalled associations or contacts with any of you, we have discussed and disclosed those contacts to you to the best of our knowledge.

### 2. THE PARTIES’ RESPONSIBILITY AND UNDERSTANDING

2.1 **Full Disclosure.** Each of you will disclose and submit complete and accurate financial information and supporting documentation regarding your financial circumstances.

2.2 **Attending Court Hearings.** Each of you is responsible for attending any scheduled court hearings or making alternative arrangements if your attendance is not possible. We cannot contact the court on your behalf regarding a court hearing set in your case. We cannot appear on your behalf, request a continuance, or request a hearing be taken off the court’s calendar. You understand attendance at court scheduled hearings is mandatory.

2.3 **Participation.** You both agree to meet regularly and to participate. The number and length of sessions may vary depending on the circumstances and complexity of the issues. At some time during the mediation process, with your permission, your mediator may want to meet with each of you separately in private sessions.

**3. THE MEDIATION PROCESS**

3.1 **Non-binding Mediation.** While the mediation process can lead to the settlement of issues, a court may still need to review your final agreement. Only at such time as you formally sign an agreement can it become legally binding. Because mediation is voluntary, either party and/or the Mediator may withdraw from mediation at any time.

3.2 **The Mediation Process Is Confidential.** Any statements made during the mediation process shall be confidential and solely for the purposes of mediation. None of you will request the mediator to testify or to provide any notes or records prepared by the mediator for the mediation process to be used or admitted as evidence in any legal proceeding. State law and court rules provide for confidentiality in mediation.

3.3 **Rules of Mediation.** You have been provided with copies of the rules of mediation, a copy of which is attached hereto and incorporated herein as Exhibit "A". You agree those rules are a part of this agreement. You will follow those rules in good faith.

3.4. **Mediator Work Product.** The Mediator work product is property of WDR. We may provide Portable Document Format (PDF) files and/or hard copies of documents. However, we will not provide any raw electronic data or word processor files.

**4. PROFESSIONAL FEES AND COSTS OF MEDIATION**

4.1 **Hourly Fees.** We will bill charges at minimum increments of one tenth of one hour. All work on the case will be billed on an hourly basis at the following rates:

|                             |       |                                     |       |
|-----------------------------|-------|-------------------------------------|-------|
| Shawn Weber                 | \$575 | Paralegal                           | \$300 |
| Elisa Kisselburg            | \$450 | Legal Assistant/Secretary/Law Clerk | \$195 |
| Associate Attorney/Mediator | \$350 |                                     |       |

4.2 **Scope of Charges.**

All work done on your case will be done at the hourly rate of the person doing the work. Charges will include, but are not limited to, the time WDR mediators and/or staff spend on analysis, emails, phone calls, other electronic communications, correspondence, file organization, scheduling, and preparation of documents. These charges include conferences, calls and e-mails with either party, experts, opposing counsel, court personnel or other persons. The legal personnel assigned to Client’s matter may confer among themselves about the matter, as required and appropriate.

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When they do confer, each person will charge for the time expended. Likewise, if more than one of the WDR personnel attends a meeting or other proceeding, each will charge for the time spent. Time is billed in minimum increments one-tenth (.1) of an hour. WDR will charge for waiting time and for travel time (if applicable), both local and out of town.

Work will be billed at the regular hourly rate and will be payable upon receipt of invoice. All fees are billed to the case regardless of which client initiated an action and/or communication by WDR staff. WDR's fees are separate from fees for accountants, legal counsel, or other experts you may engage.

**4.3 Costs and Expenses.** You will reimburse WDR for costs and expenses incurred by us in relation to the mediation, including, but not limited to, copies, filing fees, delivery fees, consultants' fees, and other similar items. There will be a charge of \$.10 per copy.

**4.4 Credit Card.** You agree to keep a credit card on file with WDR with sufficient funds available to cover your billed fees. We will run your card at the conclusion of each mediation session for time spent. We will invoice you and run the card for the outstanding charges incurred between sessions. Nothing in this agreement prevents you from paying your fees through a different method if you so choose.

**4.5 Advanced Fee Deposit for Preparation of Marital Settlement Agreement.** If you wish us to prepare a marital settlement agreement for you, a \$3,000.00 advanced fee deposit will be collected before we start work on the document. The sum will be deposited into a retainer account, to be used to pay costs, expenses, and fees for our services to assist you in finalizing your divorce. These services can include but are not limited to the following:

- The first draft of the Marital Settlement Agreement (MSA)
- One revised draft of the MSA
- An MSA Review Session of up to one hour
- The Final Signing Session (for signing and notarizing the MSA and other court documents)
- All consultations between parties and the mediator regarding the case
- Completion of the required court forms (except disclosure forms, which are completed by the parties)
- Word processing, mailing photocopying and long-distance telephone costs.

You authorize us to withdraw sums from the retainer account to pay the costs and/or fees you incur. You will receive a statement showing fees and costs charged against the deposit and the retainer account balance. Should the nature and complexity of the mediation cause your initial deposit to be utilized to the extent the remaining balance is less than \$1000.00, you will replenish the deposit, so the balance is the total of the initial amount referenced above. Until such funds have been deposited into WDR's retainer account, no further services will be rendered. At the conclusion of the above-described proceeding, any funds remaining in your retainer account will be reimbursed to you upon your request.

If you ask WDR to prepare other documents besides a marital settlement agreement, a deposit may be required depending on the time expected to complete the document. The amount of deposit shall be determined on a case-by-case basis.

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4.6 Fees related to this mediation shall be payable at the time the services are rendered. If work is performed by this office between mediation sessions, you will be expected to pay the full amount due at the following session. In the event payment is not received within 15 days, interest may be charged at the rate of eighteen percent (18%) per annum on the unpaid balance then due. Checks are payable to Shawn Weber, APC. If a check is returned from the bank for any reason, you will be charged a \$50.00 service charge.

4.7 **Disclaimer of Guarantee.** Nothing in this Agreement to Mediate or in our statements to you can be construed as a promise or guarantee about the outcome of your matter or whether an agreement will be reached. The mediator makes no promises or guarantees.

4.8 **Missed Appointments.** Any appointment with the Mediator that is cancelled or missed without giving 24-hours' notice, will be billed to you at the rate of one hour of the Mediator's time.

## 5. OTHER CONSIDERATIONS.

5.1 **Internet/Cloud Services.** We use Internet and cloud-based services for storing information and files, sharing information with clients and experts and for ease of access. These internet-based services may include, among others, tracking appointments and other calendar events, storing contact information, tracking time, storing documents, and/or sharing files with you and other authorized persons or entities.

In using internet/cloud services, we will take reasonable steps to prevent the disclosure of confidential information. These steps include reviewing the various policies, procedures, and security safeguards an internet/cloud provider has in place. We cannot provide an absolute guarantee a disclosure will not happen whether information is stored in our office or on the internet. We, however, have reviewed and shall continue to review each internet/cloud provider that we use. Having reviewed the contents of this section and having had the opportunity to discuss the issues of confidentiality and our use of internet/cloud services, you consent for us to use internet/cloud services in connection with your case. You acknowledge the unlikely risk confidential information may be disclosed despite any security precautions taken by us or the internet/cloud service providers.

5.2 **Document Security.** This office strives to protect your personal information. However, we need your cooperation to provide the best protection possible. You will be providing a significant amount of personal financial information in your process. You are therefore advised to take the time to black out all social security numbers and all but the last four digits of any account number on bank statements, loan statements, etc.

### 5.3 Email Communications.

A. **Security.** Weber Dispute Resolution uses email as a principal form of communication. You acknowledge that email communications while generally secure can be subject to "hacking" by others and there is a possibility that confidential communications may be disclosed.

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B. **Email Accounts Owned by Third Parties.** Mediation confidentiality applies to any private communication within the mediation process. However, the confidentiality may not extend to communications between us and an email account not owned by you. You acknowledge that email accounts at work or owned by third parties may be reviewed by employers and/or other third parties and therefore may not be subject to mediation confidentiality.

5.4 **Disposition of Your File.** After the mediation services conclude, this office will keep your file for five years. If you have not requested the delivery of your file after the expiration of five years, the Firm will destroy your file without further notice to you. When retrieving a file from physical storage, a fee of \$50.00 will be charged to you.

5.3 **Use of Online Internet Conferencing.** If Zoom is used during your process, then you agree to the following:

- A. You agree to the Zoom Terms of Service and Privacy and Security policy found at <https://zoom.us/terms> and <https://zoom.us/docs/en-us/privacy-and-security.html>.
- B. You will have a device to access the Zoom software which is in good working order and can utilize both the audio and video features for the Zoom video conference.
- C. No participant will allow third parties or other unidentified parties to listen in on the conference from an extension, another room or otherwise listen in off-screen.
- D. You will schedule participation in the conference so you can participate from a quiet room with little ambient noise and with as few interruptions as possible. Childcare arrangements will be made so minor children will not interrupt, view the video or hear the audio from the conference.
- E. You will not record nor permit others to record any portion (neither video nor audio) of the Zoom conference. However, the Mediator may, with your permission, record portions of the conference to memorialize agreements and/or understandings.

## 6. MEDIATION

Under California Evidence Code § 1125(a)(b), mediation terminates when 10 days have elapsed and there is no communication between the mediator and any of the parties to the mediation relating to the dispute. However, California Evidence Code § 1125(a)(b) allows the mediator and the parties to shorten or extend this time by agreement. Therefore, by signing this document, we agree to extend the period of time such that mediation will terminate if there has been no communication between the mediator and any of the parties or their designated counsel for more than 30 days. However, even if mediation terminates because of the passing of time, we may resume mediation if you choose to reengage our services. However, if significant time has passed, a new Agreement to Mediate may be required.

Should you have any concerns about the nature or quality of the mediation services or fees, you are encouraged to raise those issues directly with the mediator. If we cannot resolve those issues, then we all agree to mediate those issues in good faith with another professional mediator of your choice before pursuing other legal remedies.

We look forward to working with you. Should this agreement accurately reflect our understanding, please sign your names in the spaces provided below. You will each be given a copy of this agreement for your records.

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**Exhibit "A" – RULES OF MEDIATION**

1. Demeanor

- 1.1 One person speaks at a time. ***Please don't interrupt.*** Each person has a right to be heard. You will get your turn. If you have something you feel you must say, make a note and wait your turn.
- 1.2 The mediator reserves the right, however, to interrupt you. Sometimes communication between parties can be productive. In such a situation, the mediator will simply listen and take notes. But sometimes communication can be less productive. If that happens, the mediator may interrupt you to help make the communications more productive.
- 1.3 This is a safe place. Please make efforts to be respectful in your speech and tone. Be willing to adjust your behavior if requested. If you need a break, let the mediator know.

2. Legal Counsel and Legal Advice

- 2.1 THE MEDIATOR IS NOT ACTING AS AN ATTORNEY AND WILL NOT, UNDER ANY CIRCUMSTANCES, GIVE LEGAL ADVICE TO EITHER PARTY. YOU ARE ADVISED TO SEEK YOUR OWN LEGAL COUNSEL AT ANY TIME DURING THE MEDIATION PROCEEDINGS.
- 2.2 The mediator may give you legal information to help you make informed decisions. You are each urged to seek the advice of independent legal counsel prior to signing any written agreement.
- 2.3 You agree not to take legal action of any kind during the course of mediation, except with the agreement of the other party and the mediator. Further, if you have retained counsel prior to mediation, please direct your attorney not to act on your case while the matter is in mediation.
- 2.4 The mediator will only make any changes to any written agreements if such changes are agreed upon by both parties and that agreement is conveyed to the mediator.

3. Communications with the Mediator

The parties will not communicate or meet with the mediator concerning substantive matters except in the presence of each other during a mediation session unless the parties expressly agree beforehand that such communication may be helpful and appropriate to reaching settlement. Occasional non-substantive procedural communications may happen. All communications will be shown on the parties' billing statement.

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4. THIRD PARTY INVOLVEMENT

Please limit discussing the matters of your mediation with friends, relatives, or others. However, do consult with legal counsel, financial advisors, mental health professionals or clergy as you may find helpful.

5. FULL DISCLOSURE

5.1 Each party shall fully and completely disclose in good faith all information and writings, such as financial statements, income tax returns, pension and/or profit-sharing plans, or any other documentation.

5.2 The preparation of budgets and financial statements by each party is an essential part of the mediation process. If either party fails or refuses to prepare those documents adequately, the mediator may suspend or terminate the mediation process.

6. TRANSFERS OF PROPERTY DURING MEDIATION

During the mediation process, neither of you will transfer, encumber, conceal, sell, nor in any other way dispose of any tangible or intangible property except in the usual course of business or for necessities of life, unless you both agree in advance in writing.

7. CONFIDENTIALITY OF THE MEDIATION PROCESS

Contents of your file, or for that matter, any information about you, even your identity, will not be disclosed by any person in this office without prior consent of both of you or unless compelled by law.

Any statements made or notes taken in the mediation process will not be admissible in court and, as well, the mediator will not be a witness in any legal proceeding concerning the matter in mediation, even with the consent of both parties.