

## MEDIATION GUIDELINES

\_\_\_\_\_ v. \_\_\_\_\_, Civil Action No. \_\_\_\_\_  
Superior Court of \_\_\_\_\_ County

1. The purpose of mediation is to attempt in good faith to find a mutually acceptable resolution of the dispute. The Mediator, as a neutral and unbiased person, will conduct the discussions and negotiations and assist the parties and counsels in endeavoring to make sure that all parties understand the facts and the contentions of all parties as well as all provisions of any settlement proposal and Mediated Settlement. If anyone believes (now or during the mediation) that I should not be the Mediator in this case, please raise that issue. The Mediator cannot impose a settlement. The mediation will last as long as productive or until terminated by the Mediator or by either party.

2. If there is to be a reasonable chance to be successful and reach that mutually acceptable resolution of this matter, open and honest communication and negotiation is absolutely essential. Thus, all parties agree to and commit to making complete and accurate disclosure of all matters relevant to the dispute and its resolution. All parties are hereby informed and acknowledge that the deliberate withholding of information or the purposeful supplying of incorrect information could result in any resolution reached being set aside.

3. All participants agree to conduct himself / herself so as not to disrupt or hinder the discussions or the negotiations; each participant shall treat all others with respect and acknowledges each's right to state fully and without interruption his/her facts and contentions. Additionally, any remarks asserting blame of another participant or making any personal attack will not be made during any joint session, being reserved for a private session (a caucus) with the Mediator.

4. All parties acknowledge and understand that a Mediated Settlement Agreement – once signed – can become binding and enforceable.

5. All information gathered in the mediation session(s) is confidential and privileged but for three exceptions – (i) All participants acknowledge and understand that this confidentiality and privileged clause does not excuse the Mediator's statutory duty to report any child abuse revealed during the mediation process or any threats of imminent violence to any person; (ii) If a party signs a Mediated Settlement Agreement and later decides that he/she did not understand what he/she was signing, the Mediator can be subpoenaed to state whether he thought that he/she did nor did not know what he/she was doing at the time the document was signed; and (iii) If a Guardian ad Litem participates in the mediation, information disclosed to that Guardian is not protected by this confidentiality. This Mediator, the parties, the attorneys, and any other participants in the mediation specifically and expressly pledge to abide by this and to in fact treat all information gathered as confidential and privileged. If the Mediator decides to

go into separate and private session with each side - referred to as a 'caucus' - confidential information the Mediator is asked not to disclose in such a caucus will not be divulged to the other party without the consent of the party making the disclosure.

5. The parties and their attorneys agree NOT to call this Mediator, any Co-Mediator, or any Observer to testify as a witness in any proceeding or to subpoena or otherwise seek discovery of any written materials developed for or in the course of this mediation. And, in no event will this Mediator volunteer to testify or otherwise to provide evidence on behalf on any party.

6. All participants acknowledge and understand that the Mediator is not acting in the capacity of an attorney and does not offer any legal, tax, or financial advice; all parties have been informed of and have been encouraged to retain independent legal counsel. Additionally, each party has been informed of the right to and has been encouraged to have counsel and/or an accountant or financial advisor review any agreement reached prior to signing the final document.

7. The Mediator is acting as a facilitator/evaluator to assist the parties as best he can to resolve their dispute. It is agreed that absent misconduct, fraud, or gross negligence, the Mediator shall not be subject to liability to the parties as a result of his services as the Mediator.

8. The parties agree to compensate the Mediator at the hourly rate of \$300.00 per hour. The Mediator shall be compensated for all time in the mediation session(s), for up to one hour preparing for the mediation when reviewing documents or other material relevant to the mediation or submitted by the participants, and for all time preparing any agreement reached as a result of the mediation. Unless otherwise specifically agreed, the fee will be divided equally between the parties, and payment shall be due at the end of each mediation session.

9. By signing this document, all parties, attorneys, and other involved persons agree to participate in this mediation IN and WITH GOOD FAITH and to work toward that mutually acceptable resolution of some or all of the disputed issues. Additionally, each party's signature affirms that he/she believes himself/herself to have the capacity to conduct Good-Faith negotiations and to make informed decisions in this mediation (with the assistance of Counsel, if represented).

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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James E. Holmes, Mediator