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DIVORCE MEDIATION- A PRIMER FOR CLIENTS

1. **What is divorce mediation?** Mediation is a voluntary settlement process in which an impartial person who is trained in dispute resolution meets with the parties to discuss the issues they wish to resolve. The mediator will facilitate the negotiation of those issues, with the goal of helping the parties reach a settlement. Participation is voluntary, and any agreement reached by the parties must be entered into voluntarily; the mediator has no power to impose a settlement.

2. **Why mediate?** There are several reasons: (a) it's less adversarial than going to court; (b) it's more private; (c) you retain control of the process;(d) it's usually much less expensive; (e) if there are children involved, the process is less likely to embroil them in painful conflict; and (f) mediation often gives divorcing couples a better chance of successfully negotiating issues that may come up in the future (such as child support, alimony, or custody and visitation issues).

3. **Is your case appropriate for mediation?** If you and your spouse are comfortable talking with each other about your financial issues, child-related issues, or other issues related to the divorce process, and you have no objection to discussing them on a confidential basis with an impartial mediator, your case is probably a good candidate for mediation. Cases in which there has been a history of domestic violence are usually not good candidates for mediation. Each of the parties should have, or be willing to share, full information about individual and joint assets, liabilities, income, and expenses. Most mediators have financial statement forms that they ask the parties to fill out as part of the mediation process.

4. **When is the best time to mediate?** Most people mediate before any court papers have been filed. It is possible, however, to begin mediation at any point along the way. Sometimes, if mediation is not begun at the outset, the tensions in the case become so intense that mediation is difficult. Therefore, mediation is usually more successful early in the divorce process. If there are any time sensitive issues that need to be resolved (such as child visitation for an upcoming holiday) those issues can be put on the front burner in the mediation and resolved before more global issues are addressed.

5. **How do we select a good mediator?** There are several steps to the process. Consult friends, relatives, and/or professionals with whom you have contact. Referral lists from professional organizations can also be helpful. Consider such factors as

experience, training, cost, and geographic location. Following any initial meeting, try to determine whether the “chemistry” of your interactions with him/her feels right. The success of mediation sometimes depends on whether both parties feel comfortable with the mediator, and it is very difficult to decide that question based on paper credentials or even phone interviews.

6. **What does a mediator do?** The mediator’s primary tasks are to facilitate negotiation, help identify the parties’ underlying interests, and in some cases do some creative brainstorming/problem solving with the parties. The mediator’s ultimate goal is to assist parties’ in reaching a mutually acceptable agreement **that will be allowed under the confines of the law.**

7. **Should lawyers be involved in mediation process?** Generally lawyers do not participate in the actual mediation sessions, unless one or both of the parties feels unable to discuss and negotiate the issues that need to be resolved. If you and your spouse are able to negotiate and discuss the issues effectively, the presence of lawyers in the mediation room will, in most cases, add little to the process other than greater expense. On the other hand, there are substantial advantages when both parties line up counsel from the very beginning of the mediation, and counsel then participate from the “sidelines” (i.e., consulting with their clients between mediation sessions). Ordinarily counsel reviews any agreement before parties sign it.

8. **Who will draft the divorce agreement?** If the mediator is a lawyer, she can draft the agreement, and that is often the best procedure if the mediator is well qualified and experienced in drafting such documents.

9. **How long will the process take? What will it cost?** Most mediations are conducted with sessions of 2-3 hours. The number of sessions depends on the number of issues and how successfully the parties are able to negotiate. Mediators charge anywhere from \$150.00- \$400.00 / hour.

10. **In what way is the court involved in the process?** After the agreement is drafted and signed, it will be presented to the court with a petition of divorce. At the hearing on the petition (which both parties must attend with some exceptions, most often with attorneys present), the court will review the agreement and decide whether it is fair and reasonable. In the vast majority of cases, where the parties have counsel and a thorough mediator, the judge will approve the agreement with few, if any, questions.

11. **Are there any resources on the subject?** There is a growing library of books on divorce mediation, among them: D. Neumann, Divorce Mediation: How to Cut the Cost and Stress of Divorce (1989) (description of the process); G. Friedman, A Guide to Divorce Mediation: How to Reach a Fair, Legal Settlement at a Fraction of the Cost (1993) (vignettes and accounts of real cases); J. Folberg and A. Milne, eds., Divorce Mediation: Theory and Practice (1988) (academic study of the process).