

MEDIATION AND FEE AGREEMENT

This Agreement will set forth the terms of my participation as a Mediator in the settlement of the issues raised by your separation. Please read this letter carefully before you sign it, since it describes our roles in the mediation process, and your financial arrangement with me.

I. THE MEDIATION PROCESS

A. **Voluntary Process.** Mediation is a cooperative, voluntary dispute resolution process which uses the resources of a facilitator to assist disputants in discussing and reaching their own resolution on disputed issues. Mediation is an entirely voluntary process, and can continue only so long as each person wishes to participate. Any of us (the Mediator or either party) may suspend or terminate mediation at any time.

Mediation is an approach to dissolving a marriage on a non-adversarial basis. Through the process of mediation, you have the opportunity to negotiate your own settlement rather than have one imposed upon you by an attorney or judge. Successful mediation requires recognition by both parties that each must consider the position of the other, each must be willing to compromise and that neither should have to "win" or "lose."

B. **Agreements.** All agreements reached in mediation are tentative until they are written and signed.

II. MEDIATOR'S ROLE AND RESPONSIBILITIES

A. **Assistance in Reaching Agreement.** My role is to provide an organized framework that will make it easier for you to reach an agreement on each issue. I will facilitate your communication with one another, identify issues, ask questions, make observations, suggest options, help you each express needs, goals and feelings, check the workability of proposed solutions and prepare written summaries of our discussions and agreements. I cannot determine the result or impose choices on either of you.

B. **Mediator Confidentiality.** I may not and will not reveal information provided orally or in writing by either or both of you to third parties without the consent of both of you and my consent pursuant to California Evidence Code Section 1119, or court order. Nothing revealed in mediation, either orally or in writing, including reports and opinions of experts solicited in mediation, may be used in any civil action as evidence, unless a document provides otherwise or

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you and I consent in writing pursuant to the same Code Section and Evidence Code Sections 1121 through 1124 and 1126.

I will not hold confidential information between the two of you. In other words, information disclosed to me by either of you will be shared with the other party, though it will remain confidential within the larger mediation privilege relative to third parties. Normally I will not speak to either of you separately (other than to schedule meetings or check status) without the consent of both parties. If I speak separately with either of you, I will inform the other at the next appropriate time.

This agreement is not subject to confidentiality in the event of a fee dispute or request for fees and costs in the dissolution proceeding.

C. Duration of Mediation. Legislation provides at Evidence Code Section 1125 that a mediation automatically ends if there is no communication between the parties and mediator for 10 calendar days, which time can be extended or reduced by written agreement. Pursuant to this legislation, you agree with me and with each other that the mediation shall end if, for three calendar months, there is no communication between me and either or both of you relating to your dispute. This does not mean that we cannot recommence the mediation if 90 days passes, we simply need to do so formally.

D. Providing Legal Information. As a lawyer, I may, at your request, provide information about the law so that you can understand how the law would apply to your situation. The law provides a background or a reference point for negotiations, but is not necessarily the only standard for resolution. You acknowledge that the manner in which a court may resolve a dispute is only one standard of fairness, which applies to an issue, and you may make your own equitable agreements.

E. Non-Representation. Although I am an attorney, I do not represent either or both of you. I act only as a neutral facilitator and cannot give legal advice. You are each responsible for protecting your own interests by informing yourselves about the law and by hiring independent consulting attorneys and advisors. Also as a neutral mediator, I will not file documents with the court.

F. Estate Planning. This mediation does not cover your estate planning. Remember that during your separation, life insurance, wills, trusts, deeds, retirement beneficiary designations and other estate planning documents govern the disposition of your property and obligations in the event of your death. Subject to the requirement in mediation that no changes in your estate plan should be made without prior notice to the other, each of you is encouraged to review and modify, as appropriate, his or her estate plan (with the exception of life and health

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insurance, which may not be altered without consent of the other). I can provide referrals to appropriate estate planning professionals.

III. ROLES OF PARTICIPANTS

A. **Voluntary and Active Role.** People typically select the mediation process because they wish to reach mutually beneficial agreements, avoid adversarial proceedings and cut costs. You will agree on the subjects to discuss and the order in which to discuss them. You must also take a major responsibility for developing proposals, expressing your needs and goals, and reaching agreements.

B. **Full Disclosure.** Each of you agrees voluntarily and in good faith to make a full disclosure of the identity and value of all property, debts and income in which you have an interest both in mediation and as required by law. Each of you agrees to provide and to obtain all relevant records concerning income, assets and debts. I do not have the power or the obligation to enforce disclosure.

C. **Consulting Attorneys.** You are each required to have a consulting attorney. You may use that attorney to obtain advice throughout the mediation process or solely to review the proposed agreement. It is not necessary to inform me or the other party that you are doing so. You may also obtain independent tax, accounting or other expert advice. If requested, I can provide appropriate consulting attorney and expert referrals.

Consulting attorneys are required for two reasons. First, I can give legal information but not legal advice. Therefore, it is important that each of you understands how the agreement will affect and limit your rights now and in the future. Second, by having the agreement reviewed by separate independent counsel before signing, it is less likely to be overturned in the event of future disagreement. Also, your consulting attorneys will be responsible for drafting the final agreement and filing documents with the court.

D. **Suspension of Adverse Action.** It is an expectation of mediation that, in the absence of an emergency or an agreement to the contrary, neither of you would take adverse action against the other. If this becomes necessary, you agree to provide notice to the other party and reasonable opportunity to consult with counsel prior to taking such action. It is possible that the mediation would then be suspended.

IV. FEES AND EXPENSES

A. **Hourly Rate and Billing.** The total fee for mediation cannot be determined at this time because I cannot predict the difficulty of the services to be performed or the amount of time that will be required. The complexity of the assets or issues may require substantial time,

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including coordination with outside experts. Even when the property or custody situation is not complex, the feelings and extent of cooperation between you may require unusual time or effort in mediation.

I will bill at an hourly rate of \$500.00 for the time I spend on your case. Primarily my time will be spent in mediation sessions with you and preparation of summary letters and temporary agreements. My time may include other services such as telephone calls, letters, email and other communications to and from clients, consulting attorneys and experts, legal research as required, or other services necessary for mediation. Appointments canceled within 24 hours will result in a cancellation fee equal to one hour of my billable time.

In addition, actual costs will also be charged against your retainer, to cover such items as filing fees, expert fees and the like. The full extent of these costs cannot reasonably be predicted at this time, however, I will contact both of you and obtain your agreement before incurring any extraordinary cost.

B. Retainer. You will deposit a retainer of \$5000, which shall be placed in my trust account. Unless agreed otherwise, you will draw the retainer, and any subsequent fees from community funds, or shall each advance one-half of the fees due. At any time your trust account is reduced below \$1000, the trust account shall be replenished to the original amount within 30 days; unused trust funds will be refunded at the completion of my work.

You will receive monthly statements itemizing my time, charges and the retainer balance. Outstanding balances are due within 30 days. **An interest charge of 1% per cent per month (12 % APR) will be charged on any outstanding balance due over 30 days.**

Any question or dispute concerning the fees billed or the adequacy of my professional services will be submitted to binding arbitration under the rules established by the California State Bar and Santa Clara or San Mateo County Bar Associations.

If you are in agreement with the terms stated above, please sign the extra copy I have enclosed and return it to me with the retainer. Please feel free to call me with any questions you may have or we can discuss them when we meet. I look forward to working with you.

Sincerely,

Sherrol Lee Cassedy

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I have read and agree to the above terms of the Mediation and Fee Agreement and acknowledge receipt of a copy of the Agreement.

Dated: _____

Client

Dated: _____

Client

Dated: _____

Sherrol Lee Cassidy