

## **MEDIATION & FEE CONTRACT**

**Please read this Agreement carefully before signing it.  
It is a legally binding contract.**

### **MEDIATION**

We are requesting divorce or legal separation mediation services from Steven R. Sugarman, Esq. and/or Katie L. Kestel Martin, Esq., and agree to be bound by the following contractual provisions and conditions:

1. This mediation is voluntary. Either of us may choose to end it at any time.
2. We will make all of the decisions; the mediator cannot impose any decision upon us.
3. We understand that the mediator is in charge of the mediation. The mediator will give us each equal time as much as possible during the process. The mediator will not take sides and will attempt to guide us to a reasonable and realistic agreement.
4. Each of us is encouraged to seek advice, whenever desired, from professionals such as attorneys, accountants and/or psychologists at any time during the mediation; however, each of us accepts full responsibility for the reasonable accuracy of all information provided by such advisors, which is used in the mediation process.
5. Each of us understands that the mediator is not acting as our attorney. The mediator is not representing either one of us or both of us. The mediator cannot provide legal advice to either party, but rather, only legal information.
6. We will each fully disclose and document all of our financial income, assets, debts and liabilities during the mediation. We understand that marital property and marital debt continues to accrue until we have executed a final Settlement Agreement, unless we otherwise agree in writing or a divorce Summons is filed with the Court.
7. Mediation sessions are totally confidential.
8. We will not subpoena the mediator or the mediator's files in any legal action or proceeding. Should any party attempt, either successfully or unsuccessfully, to subpoena the mediator to any legal action, proceeding or deposition (or in any way involve the mediator in any other type of discovery proceeding) in the future which in any way relates to this mediation, such party shall pay the mediator's normal hourly fees involved in his attempts to challenge such subpoena (including but not limited to the time involved in filing, arguing and finalizing a Motion or Order to Show Cause, travel time to and from court, waiting time in court, receiving and making telephone calls and

drafting and receiving letters involving such matters), and in the event such challenge is defeated, such party shall pay all of the mediator's normal hourly fees involved in his going to court, waiting in court, testifying, conferencing and all other related time related to such matter (including but not limited to travel time to and from court, telephone calls and letters involving such matters). Such party shall also pay for the mediator's normal hourly fees for any appeal involved in such matters.

9. We both want the freedom to state what we want in the context of the mediation without the other party using any of our statements against us in any legal action or proceeding in the future. Accordingly, we both agree that all statements that we make in discussions which occur in the mediation process are to be termed "settlement negotiations" and inadmissible as evidence in any Court or other tribunal. In addition, any statement made by either party is made without prejudice and on the express condition that it may not be used in any manner in any litigation.

10. The mediator will not disclose any information concerning us to a third party without prior consent. However, in the event that the mediator discovers that a child or children of a party or the parties is, in the mediator's considered opinion, clearly being abused, the parties understand that the mediator will report such abuse to Child Protective Services of the New York State Department of Social Services. Furthermore, the confidentiality of the parties' communications to the mediator may be breached if, in the mediator's considered opinion, such breach is necessary to protect the safety of any person.

11. We each consent to our mediator contacting our respective lawyers, accountants, counselors or other professionals if necessary at any time or to respond to such contact, and to release any information given by such professional to that professional's client only. We will not share the statements made by one party in a mediation session with the lawyer, accountant, counselor or other professional of the other party.

12. Furthermore, in the event that the parties have jointly utilized the services of a neutral expert in the context of the mediation, such as an accountant or a psychologist, the parties agree that all of such expert's notes, work product, summaries, reports and anything else in their files are confidential. The parties also agree that they shall not subpoena such expert or their aforesaid paper work or files in any legal action or proceeding. All statements by the expert(s) or to the expert(s) by the parties or the mediator shall be deemed confidential, not to be disclosed to any Court or other tribunal or in any other context, whether by subpoena or otherwise. The terms of this paragraph may be waived by the express written consent of both parties; however, even in such event, such expert shall not serve as the expert of either party in such future litigation, but rather only as a neutral expert of the Court.

13. At the conclusion of the sessions, the mediator will prepare a written, proposed Agreement setting forth our agreements. We will each receive a copy of the proposed Agreement.

14. The mediator recommends that we each have a separate, independent attorney to advise us through the mediation process. In addition, the mediator requires that each party have a separate, independent attorney review the proposed Agreement before it is signed.

15. We both understand that the mediator shall prematurely terminate the mediation process and be due all fees owed him by the parties up to that point in time if, in the mediator's considered opinion:

- A. The participants insist on an agreement which is unconscionable.
- B. The participants insist on an agreement which is clearly opposed to the best interests of the children.
- C. Either or both of the participants continue to conceal financial or other relevant information from the other participant or from the mediator.
- D. Either or both of the participants continually manifest an unwillingness or an inability to participate in the process in a meaningful manner.
- E. Either party is a victim of domestic violence which makes it unlikely that a party can voluntarily enter an agreement free of duress or other pressures.

### **FEES**

The mediation fee is \$350.00 per hour for all services that Steven R. Sugarman performs and \$225.00 per hour for all services that Katie L. Kestel Martin performs. The mediators have found that it saves their time and the clients' money to delegate certain administrative activities to our paralegal; thus, any services conducted by my paralegal will be billed at the rate of \$85.00 per hour. The parties realize that the aforesaid hourly rates are applicable for 12 months from the date of the signing of this Mediation Contract, at which time the hourly fees may be adjusted. In addition, please be advised that we reserve the right to charge you a \$50.00 fee for any same-day cancellation or a "no-show" of a mediation appointment.

The parties fully understand that the hourly rates apply to all time expended relative to the mediation, including but not limited to, office meetings and conferences, telephone calls and conferences, either placed by or placed to you or otherwise made or had on your behalf or related to your matter, preparation, review, and revision of correspondence, financial information, reports, memoranda, and all other documents and papers relative to your matter, legal research, file review, meetings with professionals such as experts or your attorneys (with your consent in advance), travel time (if applicable) and any other time expended on behalf of or in connection with the mediation and the drafting of and finalization of a written agreement.

Please be advised that the time for chargeable services is billed in tenths of an hour and is computed by rounding the time for each day's activities to the next highest tenth of an hour. Each letter or document that is drafted will be billed at a minimum of .3 hours. You will also be billed a minimum of .1 hours for receiving and reviewing any correspondence or documentation; and, every telephone conversation will be billed at a minimum of .1 hours. These amounts have been arrived at as a result of calculating the time involved in retrieving the file and examining the documents or letters required to dictate the letter or respond to the call, in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

In order to begin the mediation process, you have agreed to pay \$1,800.00 as an initial retainer payment. This retainer payment does not necessarily represent the amount of the overall fee that you may incur by virtue of our services. The amount of the eventual fee will be based upon our regular schedule of established time charges, along with out-of-pocket disbursements, if any, which are incurred on your behalf. The retainer fee shall be credited toward the hourly rates as stated above. If the retainer fee is exhausted, we will ask you to make arrangements with respect to our fee. From time to time throughout the course of the mediation and Agreement drafting process, additional advance fees may be requested having regard to the anticipated hours that still must be spent on your case; in the alternative, we reserve the right to require you to pay on a per session basis. You also agree to provide us with sums based on the amount of time devoted to your case that will be indicated on monthly statements provided to you and payable within thirty (30) days. Upon receipt of our bill, you are expected to review the bill and promptly bring to our attention any objections you may have with it. While we strive to keep perfectly accurate time records, we recognize the possibility of human error, and we shall discuss with you any objections you raise to the bill. You will not be charged for time expended in discussing with us any aspect of your bill. If you do not make payments in full at the end of 30 days, we will charge you interest at the rate 1% per month on any outstanding balance. Please be advised that we reserve the right to halt the mediation process or the drafting and/or finalization of your Agreement until you are current with your bill.

As you may be aware, our office provides the convenience to clients of accepting Visa, MasterCard, American Express, and Discover charge cards. However, in the event that you charge the initial retainer and you prematurely terminate the mediation and we provide you a partial refund for the unused portion of the retainer, we reserve the right to assess your account a fee for the amount of money that the charge card company charged us for processing your initial charge.

There will be a one-time initial charge of \$50.00 to cover normal costs we incur in working on your case such as for routine photocopies, office supplies, local telephone usage and routine postage; some cases actually incur more or less of such expenses but on the average, this is a good approximation of these charges.

Please let the mediators know immediately if either of you are at all dissatisfied with any of the services which they have rendered, or if you have any questions whatsoever regarding your case or the law, or if you have any problems regarding your bill with us. We only know of your dissatisfaction or confusion if you tell us.

When the mediation process ends, we shall return any unused portion of the retainer and any other fees paid in advance to the parties on the same percentage as stated above.

Both parties agree to pay all mediation fees and costs in the following manner: \_\_\_\_\_ percent by \_\_\_\_\_ and \_\_\_\_\_ percent by \_\_\_\_\_. Please note that both parties to this Mediation and Fee Contract are jointly and severally obligated to pay these above-stated percentages of their share of the balance owing toward the mediator's services. If, for whatever reason, one party is unable or refuses to pay his/her share of the balance due the Firm, the other party will be responsible for their own share along with the share of the defaulting party. If the one party does pay the defaulting party's share, the defaulting party will be obligated to promptly refund to the paying party the monies laid out on their behalf.

Your privacy and confidentiality is important to us. While we are happy to send you materials you need by first class mail, we find that if we can use email to communicate with you and provide you information relevant to the mediation, this saves you (and us) time and money. Thus, we are assuming that that the particular email address you provide us is secure in that people that you do not want seeing what we send you do not have access to your email account. If you have concerns in this regard, tell us immediately either to use a different email address or to send you all information by first class mail. Just to be safe, underneath your signature below, if it is acceptable for us to communicate with you by email, please carefully write out the email address we should use for you.

Finally, we are required to keep your file for a minimum of seven years. After that point, your file may be destroyed at our sole discretion. If your file has not been destroyed, we will retrieve and copy documents from the file at your request. Please understand that files may be kept off site so requests for retrieval may take up to a week to accomplish. To ensure retention of your documents, please keep your own copy of all of your important documents in a secure location.

If you clearly understand and agree to be bound by all of the terms, conditions and meaning of this Contract, please sign below where indicated on the line above your type-written names and fill in the date on which you are signing, thereby showing your acceptance.

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Dated: \_\_\_\_\_  
Signature

E-Mail Address: \_\_\_\_\_

Dated: \_\_\_\_\_  
Steven R. Sugarman, Mediator

Dated: \_\_\_\_\_  
Katie L. Kestel Martin, Mediator