

AGREEMENT TO MEDIATE FORMS – FAMILY

OVERVIEW

An agreement to mediate is the form that the parties and the mediator sign to put everyone on the same page as to the process that will be followed in the mediation, what is to be considered confidential, and the parameters of the process. The agreements, therefore, should be precise in their language and they should be written in easily understood language so as to avoid any future misunderstandings.

Using a standard agreement to mediate for all court-referred mediations helps to ensure that all parties are undertaking the process with the same information and the same expectations. In situations where use of the forms is required, the court has control over how issues such as confidentiality are presented to the parties, helping to reduce missteps and misunderstandings. In situations where the forms are simply offered as a tool, they present a unified approach to provide guidance for all participants.

GOOD EXAMPLES

Domestic Guidelines for Mediation – Cobb County, Georgia

This agreement to mediate form takes an interesting tack: it provides guidelines about party behavior in the mediation that can lead to a more effective process without making that behavior a point of agreement. It covers all the right topics, including a reminder to get legal advice before signing an agreement, an explanation of the mediator's role, and confidentiality. The language is legible and friendly.

Courts adapting this rule may wish to amend it by rewriting the confidentiality section to be more specific. It states that information gathered in the mediation process is confidential. This could explain what "information gathered" means (e.g., written and oral communications, exhibits made specifically for the mediation, etc.). Further, in an area in which pro se litigants are common, a court may choose to use the simplest words possible to express an idea (e.g, "help" instead of "assistance", "effect on taxes" instead of "tax ramifications").

Agreement to Mediate, Probate Cases – New Hampshire

This is a good example of how to write an agreement for pro se litigants. It is simple but explicative. It may be helpful to include an item about the mediator meeting with the parties separately and the confidential aspects of that. A court adapting this form may want to simplify the language a bit further – "consenting" can be "agreeing" – but it does not have the ring of legalese to it.

VS.

CIVIL ACTION FILE #

DOMESTIC GUIDELINES FOR MEDIATION

Mediation is a non-adversarial process which is most effective if the parties involved work within the following guidelines:

1. Leave fault and blame aside. Accusations only hinder the process and are not relevant to the issues to be discussed in mediation. Mediation differs from litigation in that the parties, with the assistance of the mediator, reach their own agreement. The mediator will not make decisions for the parties. The mediator will lead the negotiations in assisting the parties to reach a decision which is acceptable to all.

2. Accept responsibility for yourself. State what you want and need. Include your intent, reasons and feelings. This helps facilitate the process.

3. The mediator is not acting in the capacity of an attorney and **does not offer legal advice**. All parties are encouraged to have an independent attorney look over any agreements. An outline may be completed to incorporate all issues agreed upon. The mediator is available to clarify the content of the outline to your attorneys, if necessary. All parties should have their own independent attorney look over any finalized agreements prior to signing any papers. All parties are also responsible to have their own accountant or tax advisor look over tax ramifications of agreements reached.

4. There may be times when the mediator feels a "caucus" is needed. This is when the mediator will meet with each party separately for clarification of issues. The caucus is the only time during the mediation process that information could be confidential between the parties. Information will not be shared unless permission of that party is obtained.

5. During the process of a divorce mediation, by signing this agreement, each of you is affirming that you will fully disclose all assets and liabilities. Should either party fail to do so, the document's validity could be questioned by the other party. You are further affirming that neither will transfer or dispose of any real or personal property during

the mediation process without the consent of the other party.

6. Information gathered in the mediation process is confidential and privileged. Neither the mediator nor any court designee shall willingly testify for or against either party involved should either party end the mediation process and litigate the matter in court. By signing this agreement, all parties are acknowledging that they have been advised that they may not subpoena the mediator or any court designee to testify concerning this mediation in any subsequent court actions.

7. I understand that the confidentiality of the mediation process shall not excuse the mediator's duty to report any abuse, acts of violence, or threats of violence revealed during said process.

8. By signing this agreement, all parties acknowledge they are under court order, from Cobb County Superior Court, to mediate. All agree to participate, in good faith, in each scheduled mediation session. All parties agree to work towards resolution of the issues.

9. I understand that payment of the mediator shall be agreed upon at the mediation conference. The agreed upon fee for this mediation shall be _____ hourly or _____ daily.

I have read and understand the above guidelines for mediation. I understand that neither the Mediator(s) nor court designee shall provide legal or financial advice. I understand that I have been directed and encouraged to seek independent legal advice. I further understand that by signing this agreement I am agreeing to mediate in good faith, at the agreed upon rate, and that I am under court order to do so. I have also been advised that I may not subpoena the mediator or any court designee to testify in court in any subsequent court action.

(date) _____
signature

(date) _____
signature

(date) _____
signature

(date) _____

signature

(date) _____
signature

Mediator

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: _____

Case Name: _____

Case Number: _____
(if known)

AGREEMENT TO MEDIATE

I understand and agree that:

- Mediation is a private and consensual process in which I will work to explore options for resolving the matter that brought me here today. Responsibility for resolution of the dispute rests with me and the other parties and I will be responsible for any agreements I may make during the mediation.
- I am in mediation voluntarily and in good faith. By consenting to this mediation, I affirm my willingness to speak honestly and disclose information important to bringing this matter to a fruitful outcome.
- The mediator is an impartial person whose role is to help us have a productive conversation about the matter that brought us here today and to help us decide how and on what terms we might resolve this matter. The mediator will not counsel, give advice about or make decisions regarding the outcome or resolution of this dispute.
- The mediator is not providing me with legal advice or counseling services.
- The mediator will hold confidential the written and oral communications that occur prior to, during or after the mediation, except as provided by NH law or Probate Court Administrative Order 11.
- I will not call or subpoena the mediator as a witness in, or request the mediator's records for, any court, legal or administrative proceeding arising from this mediation as provided in Probate Court Administrative Order 11. The mediator will destroy notes taken before or during the mediation.
- Any memorandum of understanding generated by the mediation shall be a record of the parties' mutually acceptable understanding of the issues discussed. The mediator gives no opinion regarding the legal implications of the Agreement to Mediate, the memorandum of understanding, any summaries of the parties' discussion or any resolution that is reached.

_____	_____	_____
Date	Petitioner or Plaintiff	Counsel for Petitioner or Plaintiff

_____	_____	_____
Date	Petitioner or Plaintiff	Counsel for Petitioner or Plaintiff

_____	_____	_____
Date	Respondent or Defendant	Counsel for Respondent or Defendant

_____	_____	_____
Date	Respondent or Defendant	Counsel for Respondent or Defendant

_____	_____	_____
Date	Mediator	Mediator