

## THE INITIAL INTAKE AND MEDIATION PROCESS

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### The First Call

- |                               |  |
|-------------------------------|--|
| Caller's goals:               | <ul style="list-style-type: none"> <li>▪ Obtain information about mediation</li> <li>▪ Obtain legal advice about divorce, custody, etc.</li> </ul>   |
| Your goals:                   | <ul style="list-style-type: none"> <li>▪ Provide information about mediation</li> <li>▪ Offer an initial consultation session and/or</li> <li>▪ Screen for appropriateness of mediation</li> <li>▪ Establish rapport so that the parties will schedule an initial consultation session</li> <li>▪ Effective marketing</li> </ul> |
| Provide to potential clients: | <ul style="list-style-type: none"> <li>▪ Introduction letter or email</li> <li>▪ Information about the mediation process</li> <li>▪ Frequently Asked Questions sheet</li> <li>▪ Information about the mediator</li> </ul>  |

The first call is usually received from one of the parties who are exploring the mediation option. Often, the option to mediate has not yet been discussed with the spouse. At this point, the goal is to provide the caller with information about mediation, possibly offer an initial consultation session, and send informational material to use in making this decision. Many callers will be seeking legal advice at this point, with common questions including: living arrangements (e.g., can I make him leave the house?) and financial protection (e.g., can I take all the money out of the joint bank accounts?) It is important to clarify the role of the mediator in the face of questions such as these.

Some mediators handle these issues by having an assistant inform the caller that these concerns can be addressed at the initial session.

### **Effective Marketing**

The initial contact provides you with your best opportunity to obtain business. If you do not provide the information and type of presentation expected at this stage (as outlined above), you are not likely to progress to the next stage. Marketing consists of several elements: presentation of self, professionalism, promotional materials, responsiveness to needs, and speed of response, among others.

### **Providing informational materials**

Every mediator should have a basic, professional-looking information packet and standard letter(s) that can be placed in the mail or emailed the same day the call was received.

**MEDIATION INTAKE FORM**

Please type or print the following information. Use additional sheets if necessary.

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Contacted By: \_\_\_\_\_

Phone: \_\_\_\_\_

Referred By: \_\_\_\_\_

Phone: \_\_\_\_\_

Fee Quoted: \_\_\_\_\_

**PARTY INFORMATION**

FULL NAME					DOB	
HOME ADDRESS	STREET				APT	
HOME ADDRESS	CITY		STATE		ZIP	
TELEPHONE			FAX			
HOME EMAIL					ED. LEVEL	
JOB TITLE					SALARY	
EMPLOYER NAME					SINCE	
EMPLOYER ADDRESS						
EMPLOYER ADDRESS	CITY		STATE		ZIP	
TELEPHONE			FAX			
WORK EMAIL						
ATTORNEY NAME						
FIRM NAME						
ATTORNEY ADDRESS	STREET				SUITE	
ATTORNEY ADDRESS	CITY		STATE		ZIP	
TELEPHONE			FAX			
EMAIL						

OTHER INFORMATION



**MEDIATION INTAKE FORM**

Please type or print the following information. Use additional sheets if necessary.

**CHILDREN OF THIS MARRIAGE**

<b>NAME</b>	<b>DATE OF BIRTH</b>	<b>LIVING WITH</b>

**CHILDREN OF PREVIOUS MARRIAGE - WIFE**

<b>NAME</b>	<b>DATE OF BIRTH</b>	<b>LIVING WITH</b>

**CHILDREN OF PREVIOUS MARRIAGE - HUSBAND**

<b>NAME</b>	<b>DATE OF BIRTH</b>	<b>LIVING WITH</b>

**MARRIAGE HISTORY**

<b>LIVING TOGETHER NOW?</b>	<b>YES</b>		<b>NO</b>	
IF NOT, DATE OF SEPARATION				
IF YES, DATE OF INTENDED SEPARATION				
WHO INITIATED SEPARATION/DIVORCE?				
DATE OF MARRIAGE				
PLACE OF MARRIAGE				

**OTHER INFORMATION**

### The Initial Face-to-Face Consultation Session With the Couple

- |                               |   |
|-------------------------------|---|
| Couple's goals:               | <ul style="list-style-type: none"> <li>▪ Obtain information about mediation</li> <li>▪ Obtain legal advice about divorce, custody, etc.</li> <li>▪ Determine if mediation is appropriate for them</li> <li>▪ Determine if they are comfortable with the mediator</li> </ul>                           |
| Your goals:                   | <ul style="list-style-type: none"> <li>▪ Screen for appropriateness of mediation</li> <li>▪ Provide information about mediation</li> <li>▪ Obtain commitment to the process</li> <li>▪ Establish principles of the process</li> <li>▪ Establish rapport with and confidence of the parties</li> </ul> |
| Provide to potential clients: | <ul style="list-style-type: none"> <li>▪ Agreement to Mediate</li> <li>▪ Fee Agreement</li> <li>▪ Literature about the mediation process</li> <li>▪ Literature about divorce (including a reading list)</li> <li>▪ Biography or resume of the mediator(s)</li> </ul>                                  |

The initial contact allows both you and the parties to assess whether mediation makes sense and that you are the right mediator for the job.

The consultation session often requires you to use your mediation skills to assist the parties in handling initial decisions. Such decisions include choosing whether to use mediation, scheduling of sessions, immediate needs of children and financial arrangements, and other emergent issues.

### **Mediator's Agenda for the Initial Consultation Session**

#### ***1. Screen for appropriateness of mediation***

The initial consultation session allows you to assess the appropriateness of mediation for the couple. Mediation may be appropriate under the following circumstances:

- Both parties are willing to participate and abide by the rules of the process (full disclosure, etc.)
- Both parties are capable of informed decision making
- Both parties are free of coercion
- If power imbalances exist, they can be compensated for during the mediation process

**2. *Provide information to the parties about mediation, the role of lawyers in the mediation process, costs, etc.***

- Attorney review of proposals for settlement and final Memorandum of Understanding
- Attorney drafting of final legal documents

**3. *Explain the mediation process***

- Confidentiality
- Voluntariness: Either party or the mediator may choose to terminate at any time
- Requirement of full disclosure about finances
- Number and length of mediation sessions
- Time frame for completion of mediation
- Use of outside experts/advisors, as necessary
- Fees
- Homework expected of the parties

**4. *Review the issues to be addressed***

- Custody
- Child support
- Parenting issues
- Spousal support
- Division of personal property
- Division of assets
- Division of debts
- Business valuation
- Tax planning

**5. *Provide information about the background and experience of the mediator***

- Provide information about your background and experience, if not previously provided or if it needs to be covered again

**6. *Begin to explore interests and issues***

**Sample mediator questions and statements at the beginning of the mediation process:**

- Explain limits of confidentiality at this stage and after an agreement to mediate is signed
- Tell me a little bit about your situation.
- So what would you like to accomplish by using mediation?
- Explain fees.
- How are the children doing?
- Should you choose to do a domestic violence screening, there are a few questions recommended by the Association for Conflict Resolution that a mediator can ask during the initial screening, which is done separately with each party.
  - Have either of you ever pushed or shoved the other?
  - What about yelling or threats?
  - Would you feel comfortable sitting in a room with your spouse and saying, “No, I don’t like that idea?”
  - What role has alcohol and drugs played in your families?
  - What about emotional difficulties or mental illness in your families?
  - What else do you think is important for me to know about your situation?
  - Do you have any concerns about the children?
- What information have you given to me that you want me to keep confidential?
- Let me tell you a bit about mediation to help us decide whether it’s appropriate for your situation.

### **Sample Explanation of Mediation to Use With Couples**

Mediation is a process that allows you to work together to decide how you want to handle the decisions that need to be made in order to [get divorced, separate, etc.] In order to get a divorce, a judge or court must approve any agreement you make. If you aren't able to make decisions together, the court will decide them for you.

My job is to help you come up with your own agreement that you both believe is as fair as it can be under the circumstance, that you've worked together to construct, and that makes sense for both of you [and for the children.] The issues that we will cover include decisions about property distribution, parenting arrangements, and financial issues, as well as any other issues that we agree make sense for you to talk about in mediation. My job is to assist you in exploring all of the decisions that you need to make and to help you share the information necessary to make informed decisions. (If you are an attorney, you may add the following: Since attorneys are not permitted to represent two people in a dispute, I can act only as a mediator for you.)

In order to make sure that your individual interests are protected as part of the divorce process, you should have an attorney representing each of you. Each of your attorneys should review your situation with you and be prepared to advise you on the legal consequences of your decisions. When you come to agreement about decisions, the attorney should review this. At the end of the process, if you have come to agreement about all of the decisions that you need to make in order to obtain a divorce, I will provide you with a document to take to your attorneys for final review. They will then put the decisions that you made into legal language and in a form that you will file with the court.

### Screening for Appropriateness of Mediation Scenarios

In the following scenarios, determine if you believe that mediation is either 1) appropriate, 2) inappropriate, or 3) you need more information before making a determination:

1. During the initial consultation session, Emily frequently appears to lose track of what she is saying and can't remember your name. Joseph, her husband of 34 years, tells you that Emily was recently in a car accident that left her mildly brain damaged. Joseph is seeking a divorce because of this and a friend recommended mediation.

appropriate  inappropriate  need more information

2. George and Kate have been married for 3 years. Shortly after their marriage, Kate discovered that George had a significant history of mental illness, with several hospitalizations for a diagnosis of paranoid schizophrenia more than five years ago. Although George has not had a relapse since their marriage and is continuing to receive treatment, including daily medication, Kate wants a divorce. George appears to be perfectly normal to you.

appropriate  inappropriate  need more information

3. Missy appears at the initial consultation session under the influence of alcohol. Andy tells you that Missy is a heavy drinker and he wants custody of the children. His lawyer recommended mediation. Missy does not have a lawyer.

appropriate  inappropriate  need more information

4. Ellen tells you that she is seeking a divorce because her husband has recently been indicted for embezzlement. She believes that Hank has been stealing from his law firm for years. His law firm has discovered that he has been wiring money out of the country. Hank insisted on mediation.

appropriate  inappropriate  need more information

5. Tom's family is quite wealthy. Suzanne is from a very poor background. After having twins, Tom became extremely jealous of the time Suzanne was spending with them, and began to follow her everywhere she went. He quit his job to stay home and watch her constantly, and began accusing her of having affairs, even though she was never out of his sight. Suzanne spoke to Tom's parents about the problem. They admitted that Tom had problems that had required psychiatric hospitalization in the past. They offered Suzanne \$250,000 to give them custody of the twins. They have hired the best divorce lawyer in the state for Tom. Suzanne has no money of her own and is relying on a friend, who is a recent law school graduate, to help her with this. Tom's parents told her she had to go to mediation to work out a settlement. Tom's parents also told her that they would fight her for custody of the children unless she renounces all claims to Tom's money (approximately \$5,000,000 in a trust fund). There was no pre-nuptial agreement.

appropriate  inappropriate  need more information

### Mediator's Opening

- 1) Welcome and Introduction of parties and mediators
  - a. Welcome parties
  - b. Introduce mediators
  - c. Use of first names ok?
- 2) Explain Process
  - a. Mediation is an opportunity for both of you to discuss and address the issues that are important to you and required to obtain a divorce.
  - b. You are the decision makers in this process and the mediators cannot impose any decisions regarding the disputed issues.
  - c. Mediator services shall not be construed as legal advice, financial advice, therapy or any professional service other than mediation. Clients may seek expert advice at any time during the mediation. The mediators have advised each of us to have separate, independent counsel review any agreement reached in mediation before signing it.
- 3) Voluntary
  - a. Voluntary for clients and mediators. If you feel at any point that you would not like to continue, please let us know. If the reason for your wanting to stop the mediation cannot be remedied, then the mediation will end.
- 4) Confidential
  - a. The mediators cannot be called to testify on behalf of either party in court MGL 233, 23C.
  - b. The mediators will keep the details of this case and all related documents confidential.
  - c. The mediator reserves the right to disclose suspected abuse and plans to commit a crime to the proper authorities.
- 5) Structure of the Mediation
  - a. Joint sessions
  - b. Mediator's Caucus
  - c. Private Sessions
- 6) Discuss note taking for mediator and parties
- 7) Agreement
  - a. Determined by clients, drafted by mediator and/or attorney
- 8) Questions
- 9) Review Agreement to Participate in Mediation form and have clients, mediators and observers sign it
- 10) Review Fee Agreement and have clients sign it

**Mini Opening Checklist**

Start each mediation session, after the first one with a “mini-opening.” Briefly remind parties of the process’s most important characteristics, including:

- 1) Agreement to Participate: first session form still applies
- 2) Confidentiality
- 3) Role of Mediators
- 4) Mediation Process: same as before, establish time for session
- 5) Ground Rules: if parties created any, last session’s still applies?
- 6) Questions
- 7) Have clients set the agenda for the session

**AGREEMENT TO PARTICIPATE IN MEDIATION**

We are requesting divorce mediation services from MWI and understand and agree to the following terms:

1. We are the decision makers in this process and the mediator cannot impose any decisions regarding the disputed issues.
2. Mediator services shall not be construed as legal advice, financial advice, therapy or any professional service other than mediation. Either of us may seek expert advice at any time during the mediation. The mediator has advised each of us to have separate, independent counsel review any agreement before we sign it.
3. Mediation is a voluntary process. The mediator or we may choose to end the process at any time.
4. We must disclose all of our financial worth, assets and liabilities during the mediation process. We each accept full responsibility for the reasonable accuracy of the figures disclosed and understand that agreements reached will be based in part on these figures.
5. We understand that mediation is a confidential process under Massachusetts General Law Chapter 233, Section 23C and that MWI and its mediators will keep the details of our case and all related documents confidential. However, we understand the mediator and MWI reserve the right to disclose suspected abuse and/or crime to the proper authorities.
6. The mediator or MWI can set forth any agreement reached in mediation in a Memorandum of Understanding, Separation Agreement or other written document upon our request.

*Signed by the parties:*

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

*and signed by the mediators:*

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

**DIVORCE MEDIATION FEE AGREEMENT**

We, the below signed parties, understand and agree to the following:

1. We will pay a total of \$350 per hour for mediation services.
2. Payment for services is due at the end of each mediation session by cash, check or credit card.
3. MWI schedules two hour sessions. If the full time is not used we understand that MWI will only charge us for actual time used.
4. If we cancel a mediation session with less than 24 hours notice, or one of us does not attend a scheduled session, we will pay a fee of two hours of time.
5. If we reschedule a mediation session with less than 48 hours notice, we will pay a fee of one hour of time before a next session will be scheduled.
6. The same hourly rate listed above applies to additional services that might be provided outside of mediation sessions, including:
  - a. Phone calls and emails with the mediator;
  - b. Preparation of written materials such as progress summaries and draft agreements;
  - c. The drafting of the Memorandum of Understanding and/or the Separation Agreement.
7. We will pay for documents in full before they are released to us by MWI.
8. We give permission for MWI to charge our credit card for mediation services as described above, unless we have paid by cash or check.
9. MWI will not provide additional mediation services until all late fees and associated balances are paid in full.
10. A late fee of 18% of the outstanding balance will be added to the total amount due if payment is not received within 30 days after services are rendered or documents are drafted.

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

CC \_\_\_\_\_ CC# \_\_\_\_\_ exp. date \_\_\_\_\_  
(Visa, MasterCard, Discover, Amex)

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

CC \_\_\_\_\_ CC# \_\_\_\_\_ exp. date \_\_\_\_\_  
(Visa, MasterCard, Discover, Amex)

TOPICS CHECKLISTChildren

	Custody
	Parenting Plan, including weekly schedule, vacations and holidays
	Traveling
	Moving
	Relationships with relatives
	Religion
	Emergency Care

Support (Child and/or Spouse/Partner)

	How much?
	How often?
	How paid?
	How long?
	Tax Consequences
	Future Adjustments

Education

	Day Care
	Private or Parochial School
	College
	Graduate School
	Activities and Lessons
	Camp
	Making Decisions
	Paying for It

Insurance

	Medical and Dental
	Life Insurance
	Uninsured Medical and Dental Expenses

Taxes

	Pending Refunds
	Pending Liabilities
	Child Tax Credit

Property Division

	Home: Buy out, sell or keep
	Other Assets: Personal Effects, Household Goods, Inheritances, Cars, Land, etc.
	Savings and Mutual Funds Accounts
	Retirement Benefits
	Debt (Credit Cards, Loans, etc.)
	Timing of Transfers

Other

	Mediation Clause
	Date and Location of Marriage
	Date of Breakdown
	Legal names now and after the divorce
	Birthdates, ages
	Employment Information
	Current Address
	Phone and Email
	Parent Education Program
	Filing Fee
	Merge or Survive
	Pets

### Use of Adjunct Professional Services in Mediation

The mediator should be familiar with the need for consultation with and/or referral to other professionals during the mediation process. Other professionals with whom mediators often interact include:

- Therapists
- Attorneys
- Accountants and tax advisors
- Certified Divorce Financial Analysts
- Financial planners
- Business valuers
- Coaches
- Mortgage Bankers

The issue of confidentiality must be considered with each interaction. The participants in the mediation may request, or you may advise, that you speak directly to other professionals during the course of the mediation. This permission should be in writing to protect everyone in the process.

The use of external professionals who can provide objective criteria and information for use by the participants in their decision making process is critical, especially with more complex financial and parental issues.

Developing a network of such professionals is important, as is the need to educate those who are new to mediation.

Remember your role in the mediation process. It is not to provide the advice of other professionals but to facilitate information gathering and informed decision making.

### Lawyers and Drafting of Legal Documents

Each party should, ideally, be represented by their own lawyer who reviews the memorandum of understanding and prepares the final legal documents for filing with the court. It is the mediator's responsibility to recommend and encourage independent legal review and counsel. Some attorneys are now very experienced in working with clients who are in mediation and offer services that work well with the mediation process. The mediator should cultivate several attorneys who are familiar with mediation, comfortable with their role in the practice, and who would be willing to accept referrals from the mediator when clients do not have attorneys. The mediator may provide clients with a list of attorneys, refer them to the local bar association lawyer referral service, and suggest that they obtain recommendations from friends and relatives who have been divorced. Many couples wish to avoid the cost of attorneys. Some have been known to add their own signature lines to the Memorandum of Understanding and submit this to the court. The mediator should be aware of these issues and be prepared to address them with the clients.

The mediator should not draft the final legal documents for filing in court. This is unethical and leads to the possibility of being accused of either:

- 1) Dual representation; Conflict of interest for attorneys, or
- 2) Unauthorized practice of law (UPL) for mediators who are not attorneys

*See section 5 page 85 for more information.*

However, see section 5, Massachusetts Bar Association - Opinion No. 85-3. The Opinion mentions "... An attorney (acting as a mediator) may also represent both parties in drafting a separation agreement, the terms of which are arrived at through mediation, but must advise the parties of the advantages of having independent legal counsel review any such agreement, and must obtain the informed consent of the parties to such joint representation..."

