



CLOSED FAMILY MEDIATION AGREEMENT

Between:

_____ & _____ (the parties)

-and-

Caroline Felstiner (The Mediator)

Mandate:

1. It is agreed that Ms. Caroline Felstiner is retained to act as the Mediator with respect to the following issues:
2. The parties understand that the Mediator is a neutral professional who will not make decisions, take sides or provide counselling to the parties. The Mediator is not conducting an assessment of either parent and does not have the authority to make binding recommendations.
3. Mediation is a voluntary process in which the parties have chosen to participate. They commit to making sincere efforts to reach agreement and will conduct themselves in good faith during the mediation process.

Procedure:

4. Each party will attend an individual intake meeting with the Mediator prior any joint session being held. During this meeting the Mediator will assess if the file is appropriate for mediation. The intake meeting is confidential subject to the exclusions noted below.
5. Mediation sessions may be held with participants in the same room or in separate rooms. In limited circumstances the Mediator may offer video conference mediation sessions. During mediation sessions, the Mediator may speak with each party in private (called a caucus). Individual meetings are sometimes held in between joint mediation sessions.
6. Following consultation with the clients and upon receiving their consent, the Mediator may include in the mediation process any other significant party such as the child(ren), a new partner, grandparents, legal counsel or other involved persons. Should the parties agree to have their children participate in mediation, separate consents will be required.

7. The parties may be asked to provide reports, documents or statements from relevant third-party professionals including, but not limited to psychological or counseling reports and/or parenting assessments.
8. All those in attendance at the mediation will be bound the confidentiality provisions of this Agreement.
9. Unless there is an emergency, neither party, nor others acting on their behalf will do anything to alter the status quo while mediation is proceeding. Should court action be commenced or resumed during the course of mediation, mediation will be terminated.

Confidentiality:

10. By signing this agreement, the parties consent to the Family Mediator collecting information from them. The parties may withdraw this consent at any time.
11. Information shared during the intake meeting is confidential and will not be shared with anyone unless consent is provided, or the mediator is required to do so by law.
12. The Mediator is required to notify the proper authorities regarding suspicions of self-harm, harm to another adult or risk of harm to a child.
13. With the exception of information shared as part of the intake process, the Mediator shall be free to disclose all information, documentation and correspondence provided by either party or generated by the mediation process with each party and with the lawyer of each party. The parties will ensure they provide their lawyers with consent to disclose information to the Family Mediator.
14. The parties agree that all communications, both written and oral made during the course of the mediation will remain confidential. Neither party will inform any other persons with the exception of their lawyers, of such communication without the written consent of the other.
15. The parties acknowledge that they have been advised to fully share with each other all information and documentation relating to the issues in dispute. If the Family Mediator wishes to speak with other service providers (e.g. therapists) she will obtain the parties' written consent prior to seeking the information.
16. At the conclusion of the mediation, the mediator will return hard copies of any documents provided by the parties and delete all electronic copies if they so request.
17. If a party withdraws from the mediation process, or when the process otherwise ends, none of the materials, notes, emails, documents, or content of sessions (verbal and written) may be used in a court or other proceeding.

Without Prejudice Discussions:

18. Mediation sessions are settlement negotiations. The discussions in mediation will not be admissible in any court proceeding, tribunal or arbitration process.

19. The parties agree, neither they nor their lawyers will summons or otherwise require the mediator to attend as a witness at any court, arbitration or tribunal proceeding. They agree that they will not seek access to or production of any notes, reports or other documents created by the Mediator during the course of the mediation. If that happens, the person seeking the subpoena will be deemed to have agreed to pay any and all costs associated with quashing the subpoena.
20. No recordings or transcripts of the mediation process shall be made by the mediator or by any party to the mediation.

Independent Legal Advice:

21. The Mediator is not a lawyer and will not offer legal advice. The parties acknowledge that they have been advised to obtain independent legal advice, preferably before mediation begins, but in any event before a final settlement is reached.
22. In the event that the parties do not have independent legal advice prior to finalizing a settlement, it is recognized that they may not be making fully informed choices in light of their respective legal rights, and the settlement they reach is less likely to be enforced by a court.

Settlement Documents:

23. At the end of each mediation session, the Mediator will write progress notes and send them to the parties. These notes may be in the form of a summarising email, a letter or a draft parenting plan.
24. If the parties reach final agreement on some or all of the issues, the Mediator shall prepare a Parenting Plan, Memorandum of Understanding or Mediation Report detailing their agreement. The Parenting Plan, Memorandum of Understanding or Mediation Report is not a legally binding contract. The parties will be required to have a Separation Agreement or other contract drafted in order to make the terms of their Mediation Report into a binding and enforceable contract.

Termination of the Mediation:

18. Either party may withdraw from mediation at any time. No adverse inference will be made against either of the parties should one of them decide to terminate the mediation.
19. The Mediator may terminate the mediation whenever:
 - i. The usefulness of the mediation process is exhausted.
 - ii. The agreement being reached is unreasonable.
 - iii. The process is likely to harm or prejudice one of the parties.
20. The commencement or continuation of a proceeding in Court, before an Arbitrator or, before an administrative tribunal will result in termination of the Mediation.

Waiver of Mediator's Liability:

25. The parties hereby waive any claim or right of action against the Mediator arising out of these proceedings.
26. Should a claim or action be made against the Mediator information in the file may be shared in defense of the claim.

Mediator's Fees:

21. The Mediator's fee is \$200.00 an hour plus HST. Each party shall pay fees for their individual intake meetings. Subsequently the parties are jointly responsible for the Mediator's fees. Fees will be paid by e-transfer, credit card or cheque at the end of each appointment.
22. You will be required to sign a credit card authorization that will be destroyed after your final invoice is paid.
23. Fees are applied to all time spent in any and all professional activities, including administrative matters associated with the mediation process or arising from the mediation process. This includes time spent in reviewing documents and correspondence, voice-mail, e-mail, as well as attending meetings and telephone calls with either client, their counsel, their child(ren) or other professionals involved.
24. Due to record keeping requirements, all time spent in any of the above activities will be tracked, and the hourly rate will be charged. In the event of a lengthy telephone call or email, the party involved in the call/email will be billed individually.
25. The Mediator requests 48 hours' notice of a cancellation. The Mediator has discretion to charge for missed appointments or appointments cancelled with less than 48 hours' notice.

We acknowledge we have read and reviewed this contract with Caroline. We agree to participate in mediation according to the terms laid out above.

Dated and Signed at Toronto, Ontario on _____, 201__.

Caroline Felstiner, AccFM, MSW