

New Jersey Statutes Annotated  
New Jersey Rules of Court  
Part I. Rules of General Application  
Chapter IV. Administration  
Rule 1:40. Complementary Dispute Resolution Programs

R. 1:40-4

1:40-4. Mediation--General Rules

Effective: September 1, 2023

[Currentness](#)

**(a) Referral to Mediation.** Except as otherwise provided by these rules, a Superior Court or Municipal Court judge may require the parties to attend a mediation session at any time following the filing of a complaint.

**(b) Compensation and Payment of Mediators Serving in the Civil and Family Economic Mediation Programs.** The real parties in interest in Superior Court, except in the Special Civil Part, assigned to mediation pursuant to this rule shall equally share the fees and expenses of the mediator on an ongoing basis, subject to court review and allocation to create equity. Any fee or expense of the mediator shall be waived in cases, as to those parties exempt, pursuant to R. 1:13-2(a). Subject to the provisions of Guidelines 2 and 15 in Appendix XXVI, Guidelines for the Compensation of Mediators, if the parties select a mediator from the court's rosters of civil and family mediators, the parties may opt out of the mediation process after the mediator has expended two hours of service, which shall be allocated equally between preparation and the first mediation session, and which shall be at no cost to the parties. As provided in Guideline 7 in Appendix XXVI, fees for roster mediators after the first two free hours shall be at the mediator's market rate as set forth on the court's mediation roster. As provided in Guideline 4 in Appendix XXVI, if the parties select a non-roster mediator, that mediator may negotiate a fee and need not provide the first two hours of service free. When a mediator's fee has not been paid, collection shall be in accordance with Guideline 16 of Appendix XXVI. Specifically, the remedy for a family mediator to compel payment is either by an application, motion or order to show cause in the Family Part or by a separate collection action in the Special Civil Part (or in the Civil Part if the amount exceeds the jurisdictional limit of the Special Civil Part). The remedy for a civil mediator to compel payment is a separate collection action in the Special Civil Part (or in the Civil Part if the amount exceeds the jurisdictional limit of the Special Civil Part). Any action to compel payment may be brought in the county in which the mediation order originated. The remedy for a party and/or counsel to seek compensation for costs and expenses related to a court-ordered mediation shall be in accordance with Guideline 17 of Appendix XXVI.

**(c) Evidentiary Privilege.** A mediation communication is not subject to discovery or admissible in evidence in any subsequent proceeding except as provided by the New Jersey Uniform Mediation Act, [N.J.S.A. 2A:23C-1](#) to -13. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.

**(d) Confidentiality.** Unless the participants in a mediation agree otherwise or to the extent disclosure is permitted by this rule, no party, mediator, or other participant in a mediation may disclose any mediation communication to anyone who was not a participant in the mediation. A mediator may disclose a mediation communication to prevent harm to others to the extent such mediation communication would be admissible in a court proceeding. A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator

may appear as counsel for any person in the same or any related matter. A lawyer representing a client at a mediation session shall be governed by the provisions of [RPC 1.6](#).

**(e) Limitations on Service as a Mediator.**

(1) No one holding a public office or position or any candidate for a public office or position shall serve as a mediator in a matter directly or indirectly involving the governmental entity in which that individual serves or is seeking to serve.

(2) The approval of the Assignment Judge is required for service as a mediator by any of the following: (A) police or other law enforcement officers employed by the State or by any local unit of government; (B) employees of any court; or (C) government officials or employees whose duties involve regular contact with the court in which they serve.

(3) The Assignment Judge and the Administrative Office of the Courts shall also have the discretion to request prior review and approval of the Supreme Court of prospective mediators whose employment or position appears to either the Assignment Judge or the Administrative Office of the Courts to require such review and approval.

**(f) Mediator Disclosure of Conflict of Interest.**

(1) Before accepting a mediation, a mediator shall:

(A) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable person would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation or an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(B) disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.

(2) If a mediator learns any fact described in subparagraph (f)(1)(A) after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) After entry of the order of referral to mediation, if the court is advised by the mediator, counsel, or one of the parties that a conflict of interest exists, the parties shall have the opportunity to select a replacement mediator or the court may appoint one. An amended order of referral shall then be prepared and provided to the parties. All data shall be entered into the appropriate Judiciary case management system.

**(g) Conduct of Mediation Proceedings.** Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures of the process. Mediators may require the participation of persons with negotiating authority. An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded. Non-party participants shall be permitted to attend and participate in the mediation only with the consent of the parties and the mediator. Multiple sessions may be

scheduled. Attorneys and parties have an obligation to participate in the mediation process in good faith and with a sense of urgency in accordance with program guidelines.

**(h) Termination of Mediation.**

(1) The mediator or a party may adjourn or terminate the session if (A) a party challenges the impartiality of the mediator, (B) a party continuously resists the mediation process or the mediator, (C) there is a failure of communication that seriously impedes effective discussion, or (D) the mediator believes a party is under the influence of drugs or alcohol.

(2) The mediator shall terminate the session if (A) there is an imbalance of power between the parties that the mediator cannot overcome, (B) there is abusive behavior that the mediator cannot control, or (C) the mediator believes continued mediation is inappropriate or inadvisable for any reason.

**(i) Final Disposition.** If the mediation results in the parties' total or partial agreement, that agreement must be reduced to writing, signed by each party, and furnished to each party. The agreement need not be filed with the court, but both roster and non-roster mediators shall report the status of the matter to the court by submission of the Completion of Mediation form. If an agreement is not reached, the matter shall be referred back to the court for formal disposition. In Family Economic Mediations, regardless of the mediation's outcome, the economic mediator shall submit to the court a Completion of Mediation form. The Completion of Mediation form referenced in this paragraph shall be in a form prescribed by the Administrative Director of the Courts.

**Credits**

Note: Adopted July 14, 1992 to be effective September 1, 1992; paragraph (c)(3) amended and paragraph (c)(4) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (a) and (c)(2) amended and paragraph (c)(3)(v) adopted July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (a) amended and redesignated as paragraphs (a) and (b), paragraphs (b), (c), (d), (e), and (f) amended and redesignated as paragraphs (c), (d), (e), (f), and (g) July 5, 2000 to be effective September 5, 2000; paragraphs (d)(2) and (d)(3) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d) and amended, former paragraph (d) redesignated as paragraph (e), new paragraph (f) adopted, former paragraph (e) redesignated as paragraph (g) and amended, former paragraph (f) redesignated as paragraph (h), and former paragraph (g) redesignated as paragraph (i) June 15, 2007 to be effective September 1, 2007; paragraph (b) amended and new subparagraph (f)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) amended, subparagraph (e)(1) deleted, subparagraphs (e)(2), (e)(3) and (e)(4) amended and redesignated as subparagraphs (e)(1), (e)(2) and (e)(3), subparagraphs (f)(1) and (f)(3) amended, paragraph (g) amended, subparagraphs (h)(1) and (h)(2) amended, and paragraph (i) amended July 27, 2015 to be effective September 1, 2015; paragraph (b) amended July 28, 2017 to be effective September 1, 2017; paragraph (i) amended August 4, 2023 to be effective September 1, 2023.

R. 1:40-4, NJ R GEN APPLICATION R. 1:40-4

New Jersey rules are current with amendments received through January 15, 2024. Some rules may be more current; see credits for details.

New Jersey Statutes Annotated  
New Jersey Rules of Court  
Part I. Rules of General Application  
Chapter IV. Administration  
Rule 1:40. Complementary Dispute Resolution Programs

R. 1:40-5

1:40-5. Mediation in Family Part Matters

Effective: October 1, 2023

[Currentness](#)

**(a) Mediation of Custody and Parenting Time Actions**

*(1) Screening and Referral.* All complaints or motions involving a custody or parenting time issue shall be screened to determine whether the issue is genuine and substantial, and if such a determination is made, the matter shall be referred to mediation for resolution in the child's best interests. However, no matter shall be referred to mediation if there is in effect a preliminary or final order of domestic violence entered pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). In matters involving domestic violence in which no order has been entered or in cases involving child abuse or sexual abuse, the custody or parenting time issues shall be referred to mediation provided that the issues of domestic violence, child abuse or sexual abuse shall not be mediated in the custody mediation process. The mediator or either party may petition the court for removal of the case from mediation based upon a determination of good cause.

*(2) Conduct of Mediation.* In addition to the general requirements of Rule 1:40-4, the parties shall be required to attend a mediation orientation program and may be required to attend an initial mediation session. Mediation sessions shall be closed to the public. The mediator and the parties should consider whether it is appropriate to involve the child in the mediation process. The mediator or either party may terminate a mediation session in accordance with the provisions of Rule 1:40-4(h).

*(3) Mediator Not to Act as Evaluator.* The mediator may not subsequently act as an evaluator for any court-ordered report nor make any recommendation to the court respecting custody and parenting time.

**(b) Mediation of Economic Aspects of Dissolution Actions.**

*(1) Referral to ESP.* The CDR program of each vicinage shall include a post-Early Settlement Panel (ESP) program for the mediation of the economic aspects of dissolution actions or for the conduct of a post-ESP alternate Complementary Dispute Resolution (CDR) event consistent with the provisions of this rule and R. 5:5-6. No matter shall be referred to mediation if a temporary restraining order is in effect in the matter pursuant to the Prevention of Domestic Violence Act. (N.J.S.A. 2C:25-17 et seq.) If a final restraining order is in effect, parties may participate in the Domestic Violence Economic Mediation program with the consent of the victim.

*(2) Designation of Mediator of Economic Aspects of Family Law Matters.* The Administrative Director of the Courts, or the Administrative Director's designee, shall be responsible for reviewing and approving all mediator applications. Applicants must complete an application form posted on the Judiciary's Internet web site [www.njcourts.gov](http://www.njcourts.gov). Mediators who meet the training requirements set forth in this rule, and any other approved criteria developed by the Family Court Programs Subcommittee of

the Committee on Complementary Dispute Resolution shall be added to the Roster of Approved Mediators. The roster shall be maintained by the Administrative Office of the Courts and shall be posted on the Judiciary's Internet web site.

(3) *Exchange of Information.* In mediation of economic aspects of Family actions, parties are required to provide accurate and complete information to the mediator and to each other, including but not limited to tax returns, Case Information Statements, and appraisal reports. The direct exchange of information between parties participating in the Domestic Violence Economic Mediation program is prohibited. The court may, in the Mediation Referral Order, stay discovery and set specific times for completion of mediation.

(4) *Timing of Referral.* Parties shall be referred to economic mediation or other alternate CDR event following the unsuccessful attempt to resolve their issues through ESP . At the conclusion of the ESP process, parties shall be directed to confer with appropriate court staff to expedite the referral to economic mediation in accordance with the following procedures:

A. Parties may conference with the judge or the judge's designee.

B. Court staff shall explain the program to the parties and/or their attorneys.

C. Parties shall be provided with the roster of approved mediators for selection. Only mediators who have been approved to conduct domestic violence economic mediation and have a domestic violence designation on the approved roster may be selected to mediate cases in which there is a final restraining order.

D. After a mediator has been selected, court staff shall attempt immediate contact to secure the mediator's acceptance and the date of initial appointment. If court staff is unable to contact the mediator for confirmation, the order of referral shall state that the mediator and the date of initial appointment remain tentative until confirmation is secured. Staff will attempt to confirm within 24 hours and send an amended order to the parties and/or their attorneys.

E. If a mediator notifies the court that he or she cannot take on any additional cases, court staff will so advise the parties at the time of selection so that an alternate mediator can be selected.

F. The court shall enter an Economic Mediation Referral Order stating the name of the mediator, listing the financial documents to be shared between the parties, and with the mediator, indicating the allocation of compensation by each party if mediation extends beyond the initial two hours, stating the court's expectation that the parties will mediate in good faith, defining the mediation time frame, and identifying the next court event and the date of that event. The direct exchange of information between parties participating in the Domestic Violence Economic Mediation program is prohibited.

G. The referral order, signed by the judge, shall be provided to the parties before they leave the courthouse. Amended orders with confirmed appointments shall be faxed to the parties and/or their attorneys the next day, replacing the tentative orders.

H. If the parties are unable to agree upon and select a mediator, the judge will appoint one. Staff shall then follow the above procedures as applicable.

I. Referral to economic mediation shall be recorded in the Family Automated Case Tracking System (FACTS).

(5) *Adjournments*. Adjournment of events in the mediation process shall be determined by the mediator after conferring with the parties and/or attorneys, provided that any such adjournment will not result in the case exceeding the return date to the court. If an adjournment would cause delay of the return date to the court, a written adjournment request must be made to the judge who has responsibility for the case or the judge's designee.

#### **Credits**

Note: Adopted July 14, 1992 to be effective September 1, 1992; new paragraph (c) adopted January 21, 1999 to be effective April 5, 1999; caption and paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; caption amended, former paragraphs (a), (b), and (c) redesignated as paragraphs (a)(1), (a)(2), and (a)(3), new paragraph (a) caption adopted, and new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a)(2) amended July 31, 2007 to be effective September 1, 2007; paragraph (b) amended and redesignated as paragraph (b)(1), caption for paragraph (b)(1) added, and new paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) caption amended, subparagraph (b)(1) caption and text amended, and subparagraph (b)(4) amended July 21, 2011 to be effective September 1, 2011; subparagraph (b)(2) amended April 5, 2022 to be effective immediately; subparagraphs (b)(1), (b)(3), (b)(4)(C), and (b)(4)(F) amended September 11, 2023 to be effective October 1, 2023.

R. 1:40-5, NJ R GEN APPLICATION R. 1:40-5

New Jersey rules are current with amendments received through January 15, 2024. Some rules may be more current; see credits for details.

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# JOINT RETENTION OF A FORENSIC

## ▶ EXPERT

# Reasons to Utilize a Joint Forensic Expert

- When the parties are relatively amicable
- Cost benefit to the parties
- Little to no complex issues
- Increases the likelihood of a settlement
- Enables cases to close more quickly



# Choosing the Right Joint Forensic Expert

- Both parties' attorneys should be comfortable with the expert and the expert's accounting firm
- The expert and expert's firm should have a good reputation within the valuation community
- The expert and expert's firm has experience as joint in matrimonial engagements
- The expert and expert's firm is unbiased and neutral

# Expectations of the Joint Forensic Expert

- Once retained, the expert should have a conference call with the parties' attorneys
- Expert should schedule an interview with each party
- Copy both parties' attorneys on all relevant communications
- Once the work is completed, schedule a conference call with the parties' attorneys and/or schedule a meeting with the parties' and their attorneys (to the extent possible)

# Potential Pitfalls/Challenges

- ▶ Parties are free to withdraw from the process at any time, it is not a binding arrangement.
- ▶ The joint expert is providing the “starting point” for potential opposing experts.
- ▶ Expert is relying on the cooperation and candor of both parties and their representatives.
- ▶ Documentation of retention and fee sharing and responsibility is vital at the time of engagement.

# **If at First You Don't Succeed, try, try again!**

## **Mediation Tips**

**Jeffrey Fiorello, Esq. &  
Jessica Ragno Sprague, Esq.**

Rule 1:40-5 Governs mediation in Family Part Matters, as to procedure and process. However, the success or failure of a mediation doesn't usually depend on the process. What and how we choose to conduct a mediation is much more likely to assist in producing a successful resolution of all or a part of the matter. But, even with best intentions, some cases present difficult issues or personalities which may make impasse seem inevitable. Notwithstanding, there are some tips which may assist to bring a mediation back on course to resolve.

1. Try and get something resolved early on. Even if it is a simple issue, showing the Parties that Mediation works, encourages them to "buy in" to the process, and provide hope that the rest of the matter may be settled as well.
2. You may need more than 1 session. Family matters are often complex and can not be resolved with only one session of mediation. Scheduling a follow up session, can be very useful. However, try to keep the parties engaged between sessions. If there is additional information needed, give the Parties "homework" to return with additional information, needed to resolve the matter.
3. Don't get stuck on a difficult issue. Just because you can't resolve your 1<sup>st</sup> issue, doesn't mean that you can't resolve other issues in the case. Returning to the difficult issue after having resolved the rest of the matter can provide momentum which may make that difficult issue fall into place. Seeing how the rest of the matter is resolved, can assist to bring that difficult, remaining issue into perspective for the Parties.
4. Don't be afraid to walk away. The treat of impasse can be helpful, but it should be used sparingly. Every time a party is not getting their way shouldn't result in a best and final threat. However, if one party has already compromised significantly more than the other party, on an important issue, making an offer as a "take it or leave it" proposition, can be effective. Such an offer may be more successful if the other party is given a day or so to consider such an offer.
5. Sometimes the desired result is met for both parties, through substantially different conversations with each side. A resolution is what is desired. If both parties are satisfied with the settlement how they arrived at the concluded settlement may not be through the same approach. When a mediation summary is presented, don't be surprised if the summary is vague on why each party agrees with the resolution.

6. You don't have to settle everything. There are other avenues of Alternate Dispute Resolution, which are available to assist:

a. Parent Coordination: if a matter resolves, with the exception of a few minor issues in the parenting plan, the parties can bring that issue to a Parent Coordinator to assist in resolving such an issue.

b. If you resolve certain issues, you may choose to submit the remaining issues to an Arbitrator to try unsettled issues. But you are limiting the scope of what is being decided. Stipulate to what is resolved, and leave the remaining issue(s) for adjudication by the Arbitrator.

These are just some of the things which can be done to avoid impasse, and resolve a matter. Mediation and other Alternate Dispute Resolution Programs are designed to allow creativity. The creativity isn't exclusively reserved for the resolved outcome. Creativity can extend to the process as to how you arrive at that outcome. Don't be afraid to think outside of the box and take risks in attempting settlement.

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♦COURT APPROVED MEDIATOR  
•OF COUNSEL

March 4, 2024

**VIA EMAIL ONLY**  
ATTORNEY #1

**VIA EMAIL ONLY**  
ATTORNEY #2

**Re: NAME V. NAME**

Dear Mr. \_\_\_\_\_ and Ms. \_\_\_\_\_:

**MEDIATION RETAINER AGREEMENT**

This shall serve as the agreement between \_\_\_\_\_ and \_\_\_\_\_, and between \_\_\_\_\_, \_\_\_\_\_ and Phyllis S. Klein, Esq. with respect to mediation of your divorce.

1. I agree to serve as mediator to facilitate direct negotiation between you in an attempt to help you agree on all issues related to your divorce.
2. I will serve at all times as an impartial facilitator of your negotiations. Although I am a member of the bar of the State of New Jersey, my role in this matter is exclusively limited to that of mediator and under no conditions will I represent either or both of you at any time during the process.
3. To preserve the integrity of the mediation process it is agreed that neither I nor any of my records shall be subject to subpoena by either of you or anyone acting on your behalf should you choose to litigate this matter subsequent to mediation. Each of you makes this covenant with the other as a condition of your agreement with each other to attempt mediation. Each of you also makes this covenant with me to induce me to agree to serve as your mediator.

4. Good faith negotiation requires full disclosure of all information relevant to the issues to be negotiated. You each agree to produce any and all pertinent documents that I request or that either of you requests of each other. If documents and information requested by me is not forthcoming, I reserve the right to terminate the mediation.

5. It is agreed that if the services of other professionals is required to appraise or otherwise evaluate your assets and income, that you will retain neutral experts for each task and that you will promptly pay their respective fees. This may include an accountant, appraiser, pension expert, tax expert or a mental health professional. If requested, I will recommend professionals whose opinions I respect.

6. You are strongly urged to obtain separate legal counsel to advise you during the mediation process and I acknowledge that you both are currently represented by counsel.

7. At the conclusion of mediation, and at interim points as requested, at your request or at the request of counsel, I will prepare summaries or memorandums of understanding reflecting the agreements you have reached. These summaries or memorandums are not to be signed and are not to be regarded as binding until the terms therein are incorporated in a marital settlement agreement or other binding writing, such as a binding term sheet, subsequently prepared and then signed by you. It is understood that your participation in mediation is wholly voluntary and that either of you may discontinue mediation at any time.

8. My fee for services rendered shall be \$550.00 per hour for all time I spend on your mediation against an initial retainer of \$5,000 (\$2,500 each). Each of you shall be responsible for payment of my services on a 50/50 basis without prejudice to later reallocation. Services shall include, but not limited to, reviewing correspondence and documents, conducting mediation sessions, conducting telephone conferences and the preparation of mediation summaries, a memorandum of understanding, term sheet or any other agreement that you request. In addition to fees, you will be responsible for all disbursements incurred or paid out in the performance of our services. These costs include by way of example: messenger fees, on-line research, travel expenses, photocopy costs [at 25 cents per copy], "faxes" [at \$1.50 per page, received or sent]. Said costs will be reflected as separate entries on billing invoices.

9. Statements of time spent shall be completed on the basis of six (6) minute intervals at Ms. Klein's hourly rate as set forth above. All services will be charged at a minimum of 1/10th of an hour. If and when the Retainer is extinguished, any invoice remaining unpaid after thirty (30) days upon receipt of your invoice, shall be automatically charged to your credit card. If your credit card is not accessible for any reason and no payment is received within thirty (30) days of your receipt of an invoice, you will be charged interest at the rate of 1% per month, compounded annually, on all unpaid balances. If no comment about the billing is received, in writing, within thirty (30) days of the statement date, we will assume that you have seen the bill and find it acceptable. Our credit card authorization form is attached hereto and must be completed and returned before services are rendered by way of **facsimile or regular mail, only, and not by email.**

10. You understand that you will receive notification via email when your credit card is charged. You agree that, in the event your credit card is denied, cancelled, or withdrawn for any reason, you shall provide the Law Firm with a valid credit card within five (5) days of any such denial, cancellation, or withdrawal. If no valid credit card is provided, the Law Firm may immediately stop work on your file and begin to withdraw from your matter, and you agree to provide your full cooperation. You further understand that if you have authorized use of a credit, you may withdraw your authorization for its use at any time by notifying the Law Firm in writing provided, however, that you must provide a replacement card within the time set forth above.

11. By signing below, you certify that you have no questions and/or that all questions in connection with this matter have been fully and completely explained to your satisfaction, as well as acknowledging receipt of a copy of this agreement.

12. At the conclusion of this matter, we will retain your legal files for a period of seven (7) years after we close our file. At the expiration of the seven (7) year period, we will destroy these files unless you notify us in writing that you wish to take possession of them. We reserve the right to charge administrative fees and costs associated with the researching, retrieving, copying and delivering such files.

If the foregoing meets with your approval, please sign below.

Very truly yours,

**HAGAN, KLEIN & WEISBERG, LLC**

*Phyllis S. Klein /s/*

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Phyllis S. Klein, Esq.



ATTORNEY #1  
ATTORNEY #2  
March 10, 2024  
Page 4

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

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♦COURT APPROVED MEDIATOR  
•OF COUNSEL

March 4, 2024

**VIA EMAIL ONLY**  
ATTORNEY #1

**VIA EMAIL ONLY**  
ATTORNEY #2

**Re: NAME V. NAME**

Dear Mr. \_\_\_\_\_ and Ms. \_\_\_\_\_:

**MEDIATION RETAINER AGREEMENT**

This shall serve as the agreement between \_\_\_\_\_ and \_\_\_\_\_, and between \_\_\_\_\_, \_\_\_\_\_ and Phyllis S. Klein, Esq. with respect to mediation of your divorce.

1. I agree to serve as mediator to facilitate direct negotiation between you in an attempt to help you agree on all issues related to your divorce.

2. I will serve at all times as an impartial facilitator of your negotiations. Although I am a member of the bar of the State of New Jersey, my role in this matter is exclusively limited to that of mediator and under no conditions will I represent either or both of you at any time during the process.

3. To preserve the integrity of the mediation process it is agreed that neither I nor any of my records shall be subject to subpoena by either of you or anyone acting on your behalf should you choose to litigate this matter subsequent to mediation. Each of you makes this covenant with the other as a condition of your agreement with each other to attempt mediation. Each of you also makes this covenant with me to induce me to agree to serve as your mediator.

4. Good faith negotiation requires full disclosures of all information relevant to the issues to be negotiated. You each agree to produce any and all pertinent documents that I request or that either of you requests of each other. If documents and information requested by me is not forthcoming, I reserve the right to terminate the mediation.

5. It is agreed that if the services of other professionals is required to appraise or otherwise evaluate your assets and income, that you will retain neutral experts for each task and that you will promptly pay their respective fees. This may include an accountant, appraiser, pension expert, tax expert or a mental health professional. If requested, I will recommend professionals whose opinions I respect.

6. You are strongly urged to obtain separate legal counsel to advise you during the mediation process and I acknowledge that you both are currently represented by counsel.

7. At the conclusion of mediation, and at interim points as requested, at your request or at the request of counsel, I will prepare summaries or memorandums of understanding reflecting the agreements you have reached. These summaries or memorandums are not to be signed and are not to be regarded as binding until the terms therein are incorporated in a marital settlement agreement or other binding writing, such as a binding term sheet, subsequently prepared and then signed by you. It is understood that your participation in mediation is wholly voluntary and that either of you may discontinue mediation at any time.

8. My fee for services rendered shall be \$550.00 per hour for all time I spend on your mediation. Each of you shall be responsible for payment of my services on a 50/50 basis without prejudice to later reallocation. Services shall include, but not limited to, reviewing correspondence and documents, conducting mediation sessions, conducting telephone conferences and the preparation of mediation summaries, a memorandum of understanding, term sheet or any other agreement that you request. In addition to fees, you will be responsible for all disbursements incurred or paid out in the performance of our services. These costs include by way of example: messenger fees, on-line research, travel expenses, photocopy costs [at 25 cents per copy], "faxes" [at \$1.50 per page, received or sent]. Said costs will be reflected as separate entries on billing invoices.

9. Statements of time spent shall be completed on the basis of six (6) minute intervals at Ms. Klein's hourly rate as set forth above. All services will be charged at a minimum of 1/10th of an hour. Any invoice remaining unpaid after thirty (30) days upon receipt of your invoice, shall be automatically charged to your credit card. If your credit card is not accessible for any reason and no payment is received within thirty (30) days of your receipt of an invoice, you will be charged interest at the rate of 1% per month, compounded annually, on all unpaid balances. If no comment about the billing is received, in writing, within thirty (30) days of the statement date, we will assume that you have seen the bill and find it acceptable. Our credit card authorization form is attached hereto and must be completed and returned before services are rendered by way of **facsimile or regular mail, only, and not by email.**

10. You understand that you will receive notification via email when your credit card is charged. You agree that, in the event your credit card is denied, cancelled, or withdrawn for any reason, you shall provide the Law Firm with a valid credit card within five (5) days of any such denial, cancellation, or withdrawal. If no valid credit card is provided, the Law Firm may immediately stop work on your file and begin to withdraw from your matter, and you agree to provide your full cooperation. You further understand that if you have authorized use of a credit, you may withdraw your authorization for its use at any time by notifying the Law Firm in writing provided, however, that you must provide a replacement card within the time set forth above.

11. By signing below, you certify that you have no questions and/or that all questions in connection with this matter have been fully and completely explained to your satisfaction, as well as acknowledging receipt of a copy of this agreement.

12. At the conclusion of this matter, we will retain your legal files for a period of seven (7) years after we close our file. At the expiration of the seven (7) year period, we will destroy these files unless you notify us in writing that you wish to take possession of them. We reserve the right to charge administrative fees and costs associated with the researching, retrieving, copying and delivering such files.

If the foregoing meets with your approval, please sign below.

Very truly yours,

**HAGAN, KLEIN & WEISBERG, LLC**

*Phyllis S. Klein /s/*

\_\_\_\_\_  
Phyllis S. Klein, Esq.

ATTORNEY #1  
ATTORNEY #2  
March 10, 2024  
Page 4

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

\_\_\_\_\_  
NAME

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
ADDRESS

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

\_\_\_\_\_  
NAME

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
ADDRESS

**To:** Attorney #1 and Attorney #2

**From:** Phyllis S. Klein, Esq.

**Date:** \_\_\_\_\_, 2024

**Re:** Name v. Name, Summary of Mediation Discussions of \_\_\_\_\_, 2024

---

Set forth below is a summary of our discussions from the Mediation Session which took place on \_\_\_\_\_, 2024.

Husband's Settlement Offer

Prior to Friday, \_\_\_\_\_, 2023, \_\_\_\_\_ shall advise as to whether he/she can accept the global settlement offer proposed by \_\_\_\_\_ during mediation. Should \_\_\_\_\_ accept the proposal, the remaining points of this summary are no longer necessary. \_\_\_\_\_'s settlement proposal is as follows:

- Mutual Waiver of Alimony
- \_\_\_\_\_ will buy out \_\_\_\_\_'s interest in the marital home, located at \_\_\_\_\_, \_\_\_\_\_, NJ, for a sum of \$\_\_\_\_\_.
- Each party would keep his or her own assets, including but not limited to, the retirement assets (except that \_\_\_\_\_ shall continue to retain her direct payment from \_\_\_\_\_'s Pension), bank accounts, Federal Credit Union account, \_\_\_\_\_ account, life insurance, and vehicles.

Should \_\_\_\_\_ accept the offer, then \_\_\_\_\_ will pay \_\_\_\_\_ the buyout amount within 30 days from the execution of an Agreement. Likewise, \_\_\_\_\_ must vacate the marital residence within 60 days from the execution of an Agreement. However, for every day that \_\_\_\_\_ delays paying \_\_\_\_\_ the buyout amount, the same number of days will be added to \_\_\_\_\_'s deadline to move out. For example, if \_\_\_\_\_ pays \_\_\_\_\_ 50 (30 + 20) days after the execution of the Agreement, then \_\_\_\_\_ would have 80 days from the date of the Agreement to move out (60 + 20).

Should \_\_\_\_\_ decline \_\_\_\_\_'s offer, or if \_\_\_\_\_ declines \_\_\_\_\_'s counteroffer (should he/she make one), then the parties discussed the following:



Appraisals

\_\_\_\_\_ and \_\_\_\_\_ agree to retain \_\_\_\_\_ Appraisals in \_\_\_\_\_, New Jersey, to perform an appraisal. The cost of said appraisal, which the parties estimate to be between \$500 and \$600, shall be split equally between the parties. Attorney #1 shall email \_\_\_\_\_, with a copy to Attorney #2, to set up an appraisal date. He/she will also provide the appraiser with the parties' contact information as both parties plan to be present.

Pension Accounts

\_\_\_\_\_ and \_\_\_\_\_ agree to retain \_\_\_\_\_ to determine the marital and exempt portions of the parties' pensions accounts. Therefore, Attorney #1 will email \_\_\_\_\_ to set up a counsel only conference call so that Attorney #1 and Attorney #2 can advise Ms. Deer as to her tasks. Specifically, counsel will advise \_\_\_\_\_ that part of \_\_\_\_\_'s pension is premarital and not subject to equitable distribution. However, because \_\_\_\_\_ took her pension in a lump sum, \_\_\_\_\_ will have to determine what the marital and non-marital portions of her plan would have been.

\_\_\_\_\_ 's Future Social Security Payments

\_\_\_\_\_ will demonstrate what his/her payment would be if he/she took it today versus what it will be when he/she turns 67. As such, \_\_\_\_\_ will reach out to Social Security to obtain proof of same.

\_\_\_\_\_ 's Federal Credit Union Account

As of \_\_\_\_\_, 2023, this account had a value of \$\_\_\_\_\_. According to \_\_\_\_\_, part of this account is not subject to equitable distribution. However, he does not have any proof. Therefore, we need to discuss the division of this account further during our next mediation session.

\_\_\_\_\_ 's \_\_\_\_\_ Account

\_\_\_\_\_ acknowledges that this account is entirely subject to equitable distribution. As of \_\_\_\_\_, 2023, this account had a value of \$\_\_\_\_\_.

\_\_\_\_\_ 's Property in \_\_\_\_\_

The parties disagree as whether the property owned by \_\_\_\_\_ in \_\_\_\_\_ was truly gifted to him by his mother. However, beyond that, there is also a debate as to whether this property produces income, which would obviously factor into any request for alimony.

*March 10, 2024*

Accordingly, if we cannot reach an agreement, Attorney #1 will send his/her discovery requests relating to this property to Attorney #2.

Next Mediation Session

Your next scheduled mediation date is \_\_\_\_\_, 2024. This session shall take place at my office located at **44 Whippany Road, Suite 108A, Morristown, New Jersey 07960.**



**BINDING TERM SHEET**

**JANE DOE v. JOHN DOE**

**Docket No.: FM-00-0000-00**

The parties, Jane Doe (“Jane”) and John Doe (“John”), having engaged in a mediation session with Phyllis S. Klein, Esq., on \_\_\_\_\_, 2024. Jane is represented by \_\_\_\_\_, Esq. of \_\_\_\_\_, LLC. John is self-represented. The parties, whose signatures appear below, acknowledge and agree that the terms set forth herein are agreed to and represent a binding agreement upon the parties only for the terms so set forth and are effective and binding at the time of signature. Ultimately, this Binding Term Sheet may be amended, or a more formal Agreement or Consent Order may be drafted, that will reflect said terms, may elaborate said terms and may address additional issues.

**Financial Terms**

1. Jane will retain the former marital home located in \_\_\_\_\_, New Jersey. Jane will buy out John’s interest in the amount of \$\_\_\_\_\_. The parties acknowledge that Jane has already advanced \$\_\_\_\_\_ to John and owes \$\_\_\_\_\_. The parties will address the payment terms, shortly.
  
2. Each party will retain his and her respective bank, brokerage and retirement accounts, without credit to the other. No joint accounts exist.
  
3. Each party will retain his and her respective vehicle without credit to the other and shall bear all costs associated with same.
  
4. Each party will bear responsibility for the credit cards in his and her respective name and will remove the other party as an authorized user. Until same is accomplished, neither party will charge on the other party’s card(s).
  
5. The parties acknowledge that their personal property, including but not limited to, household furniture and furnishings, has been divided to their mutual satisfaction.
  
6. Each party will retain his and her respective business interests without credit to the other and shall bear all costs associated with same.
  
7. Each party shall pay his and her own counsel fees and costs.
  
8. Both parties waive alimony.

9. John waives any claim for retroactive reimbursement for payment of Jane’s health insurance up until \_\_\_\_\_, 2024. For each month thereafter that Jane remains on John’s policy (understanding that it will need to be terminated upon the divorce), Jane shall reimburse John for the cost. Reimbursement terms to be determined. Both parties waive any claims for retroactive reimbursement for the payment of the children’s expenses.

10. Neither party shall pay child support to the other. Effective \_\_\_\_\_, 2024, the parties shall share in the children’s agreed upon extracurricular expenses, except the summer activity expenses (including but not limited to camp), work related childcare and unreimbursed health expenses at the rate of Jane 60% and John 40%, consent not to be unreasonably withheld. Effective the summer of 2025, the parties shall share in the children’s agreed upon summer activity expenses (including but not limited to camp), capped at \$500 per week per child, at a rate of Jane 60% and John 40%, consent not to be unreasonably withheld. The true-up arrangement is to be determined and set forth in the final written agreement. Jane shall pay 100% of the children’s summer activity expenses (including, but not limited to camp) for the Summer of 2024.

11. All claims relating to the aforementioned financial terms, including, but not limited to, pendente lite support related claims, are hereby waived except as set forth above.

Custodial Terms

12. The parties acknowledge a difference of opinion as to whether John shall exercise 5 overnights in 14 days or 6 overnights in 14 days. Accordingly, as the parties and the children have not experienced John exercising more than 4 overnights in 14 days, although he exercises significant non-overnight parenting time in addition thereto, the parties have agreed to implement a trial custodial schedule through \_\_\_\_\_, 2024, consisting of 6 overnights in 14 days as follows:

	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>	<u>Saturday</u>	<u>Sunday</u>
<b>Week 1</b>	Mother	Mother	Mother  <i>Father one-on-one with Child #1 from ____ to ____</i>  <i>Mother One-on-one time with Child #2 from ____ to ____</i>	Father	Father	Father	Father

	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>	<u>Saturday</u>	<u>Sunday</u>
<b>Week 2</b>	Mother	Mother	Father  <i>Father one-on-one with Child #2 from ___ to ___</i>  Mother <i>One-on-one time with Child #1 from ___ to ___</i>	Father	Mother	Mother	Mother

In the event the parties are unable to agree to maintain this schedule beyond \_\_\_\_\_, 2024, then effective \_\_\_\_\_, 2024, John's Week 2 Wednesday overnight will automatically be eliminated and Jane will have the overnight, such that John will have 5 overnights in 14 days rather than 6 overnights in 14 days, as follows:

	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>	<u>Saturday</u>	<u>Sunday</u>
<b>Week 1</b>	Mother	Mother	Mother  <i>Father one-on-one with Child #1 from ___ to ___</i>  Mother <i>One-on-one time with Child #2 from ___ to ___</i>	Father	Father	Father	Father
<b>Week 2</b>	Mother	Mother	Mother  <i>Father one-on-one with Child #2 from ___ to ___</i>  Mother <i>One-on-one time with Child #1 from ___ to ___</i>	Father	Mother	Mother	Mother

13. Both of the aforementioned schedules are without prejudice and shall not be precedent setting. If agreement as to the schedule is not reached by \_\_\_\_\_, 2024, either party may address the issue to the Court as if custody had not been resolved. Therefore, each may propose any schedule that he or she believes in in the best interests of the children. In that regard, it is anticipated that either party may offer reports and testimony from independent custodial experts. Indeed, the parties acknowledge that John has already commenced a custodial expert evaluation. The parties agree that each will cooperate with the other's custodial expert, regardless of whether same is pursued before, on or after \_\_\_\_\_, 2024.

14. The parties agree that to the extent that custodial exchanges do not occur at the children's schools, the non-overnight parent will transport the child/children to the overnight parent.

15. The parties intend that upon execution of the Binding Term Sheet, Jane's attorney, \_\_\_\_\_, Esq., will prepare and circulate a Marital Settlement Agreement. It is anticipated that John will hire counsel to review both documents.

\_\_\_\_\_  
JANE DOE  
Dated:

\_\_\_\_\_  
JOHN DOE  
Dated:

\_\_\_\_\_, ESQ.  
Attorney for Jane Doe  
Dated:

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN [NAME] AND [NAME]**

Although this Memorandum is drafted in a form resembling an Agreement and reflects certain preliminary agreements reached by the parties during mediation with Phyllis S. Klein, Esq. regarding their separation and anticipated divorce, it is not a binding contract. The parties recognize their right to review the terms with separate and independent legal counsel, however, they have specifically decided to waive their right to do so and enter into an Agreement without the benefit of separate and independent legal counsel. Upon review and consideration of the substantive terms of this Memorandum, should the parties wish to be bound by its terms, they will execute the “Waiver of Attorney and Agreement to make this Memorandum of Understanding Binding” section below.

**ASSUMPTIONS**

1. The parties relied on the following facts and assumptions when negotiating this Memorandum of Understanding.

a. John Doe (“Husband”) is \_\_\_\_\_ years old, born on \_\_\_\_\_.  
Husband resides at \_\_\_\_\_.

b. Jane Doe (“Wife”) is \_\_\_\_\_ years old, born on \_\_\_\_\_. Wife resides  
at \_\_\_\_\_.

c. The parties were married on \_\_\_\_\_.

d. The parties separated in and around \_\_\_\_\_. The parties agree to use  
\_\_\_\_\_ as the termination date of their marriage.

e. Two children were born of the parties' marriage: John Doe, Jr. is \_\_\_\_\_, born \_\_\_\_\_ ("Child #1"); and Jane Doe, Jr. is \_\_\_\_\_, born \_\_\_\_\_ ("Child #2").

f. Husband has a Bachelor's of Science degree from \_\_\_\_\_. Husband is currently employed by \_\_\_\_\_. He earns an annual gross salary of \$\_\_\_\_\_ plus the potential to earn an additional target bonus of 20% of his base salary, for total estimated gross annual income of approximately \$\_\_\_\_\_.

g. Wife has a medical degree from \_\_\_\_\_. Wife is currently employed as a physician at \_\_\_\_\_. She earns an annual gross salary of \$\_\_\_\_\_ with the potential to earn bonuses, for a total estimated gross annual income of approximately \$\_\_\_\_\_.

## **CUSTODY**

### **Joint Legal Custody**

2. The parties will share joint legal custody of Child #1 and Child #2. The parties agree to make joint decisions regarding any major decisions involving the children's health, education, religious upbringing, activities and general welfare.

### **Joint Residential Custody**

3. The parties shall share joint residential custody on a 50/50 basis on an alternating week basis.

### **Right of First Refusal**

4. The parties acknowledge that circumstances arise whereby the party who has physical custody of the children may be unable to care for the children. In the event that the custodial party will be unavailable for more than three (3) hours or overnight, the other party shall have the first option to

care for the children during that period before a babysitter is confirmed. This shall include, but shall not be limited to vacation and holiday periods and work related travel. However, that right to first option is not an automatic transfer of responsibility. Should the party with the first option to care for the child be unable or unwilling for any reason, it will be the custodial party's responsibility to find alternative care.

**Holiday and Vacation Schedule (other than Summer Vacation)**

5. The parties agree that they do not require a formal holiday and vacation schedule. Instead, they will address holidays and vacations as they arise but, generally, agree to share alternate holidays and vacations on an equal basis.

**Summer Vacation Schedule**

6. The summer vacation schedule takes precedence over the alternating weeks regular parenting schedule set forth above. Each party will be entitled to up to three consecutive weeks of vacation with the children during the summer. Vacation schedules will be built around the agreed upon children's summer activities, and then the parties will determine their remaining alternating week regular summer schedule. In odd years, Husband shall have the first option to choose his vacation time with the children and in even years Wife shall have the first option. When a party has the first option, he or she shall choose by April 1<sup>st</sup>, and the other party shall choose by April 15<sup>th</sup>. No later than fourteen (14) days before taking their vacations with the children, each party shall provide the other with the destination, addresses and telephone numbers where they will be staying when away, and if they will not be traveling by car, all travel arrangements, i.e., the mode of transportation, airline, flight numbers, cruise line, ship name, cities of departure and arrival, etc.

**Birthday, Mother's Day and Father's Day Schedule**

7. On Husband's birthday and on Father's Day, he will exercise parenting time, which, at Husband's option, may include the previous overnight. On Wife's birthday and on Mother's Day, she will exercise parenting time, which, at Wife's option, may include the previous overnight. The parties will each have the ability to exercise parenting time with Child #1 and Child #2 on their respective birthdays.

**ALIMONY**

8. The parties hereby mutually waive any past, present or future claims for alimony.

**CHILD SUPPORT**

9. The parties agree that neither party shall pay child support directly to the other party. As of the date of the execution of this MOU, each party shall be solely responsible for the children's shelter, food and day-to-day costs incurred on the children's behalf when the children reside with him or her. Also, as of the same date, the parties agree to pay all of the children's other reasonable, personal expenses on a 50% / 50% basis. Such expenses shall include, but not be limited to, the following:

- a. Clothing
- b. Sports and sports related lessons, training and equipment
- c. School related expenses and teachers' gifts
- d. Extracurricular activities
- e. Summer camp or activities
- f. Religious expenses
- g. Work related child care



- h. Unreimbursed health related expenses
- i. Tutoring
- j. Friends' birthday party gifts

As to individual expenses exceeding \$100, the parties will agree upon same before they are incurred, except in the event of an emergency. Consent shall not be unreasonably withheld.

### **HIGH SCHOOL**

10. The parties have considered the possibility of enrolling their children in Catholic School for high school but have not made an ultimate decision. The parties shall abide the event and shall discuss and agree upon any decision regarding high school enrollment. The parties acknowledge that neither party has the obligation to contribute toward the cost of Catholic School, unless otherwise agreed.

### **POST-HIGH SCHOOL EDUCATION AND RELATED EXPENSES**

11. The parties anticipate that their children will receive post-high school education. For the purpose of this provision, same shall include undergraduate college, vocational or trade school education. Post-High School related expenses shall include all necessary charges for pre-admission standardized tests, traveling and accommodations with viewing schools or interviewing at schools, applications fees, tuition, room, board, activity fees, lab fees, books and supplies and transportation. The parties shall abide the event and will reconvene at the relevant time to determine each party's share of any shortfall after grants, scholarships, and financial aid available to the child and reasonable loans based on their respective abilities at the time, taking into consideration their income, assets and liabilities.

12. The parties currently maintain 529 educational accounts maintained for the benefit of the children with combined balances of \$\_\_\_\_\_ as of \_\_\_\_\_. The parties have agreed to continue to contribute together to the 529 accounts for the children's post-high school education and related expenses as set forth in Paragraph \_\_\_ above. The preexisting balance of the 529 accounts and the continued contribution into this fund by the parties will be made off the top, not towards either party's individual contribution toward the post-high school education and related expenses. Should the parties choose to save separately, the funds will be allocated to that party's individual contribution.

**HUSBAND AND WIFE'S HEALTH INSURANCE**

13. Each party maintains their own health insurance at their individual cost, which they shall continue to maintain at their sole cost without contribution from the other. The parties shall each be responsible for the past, present and future unreimbursed medical expenses.

**CHILDREN'S HEALTH INSURANCE**

14. Husband currently maintains health insurance and dental insurance for the benefit of the children and shall continue to do so.

**LIFE INSURANCE**

15. Each party shall maintain life insurance for the children until they are emancipated. Wife shall maintain her employment related life insurance policies (base and supplemental), currently amounting to \$\_\_\_\_\_. Husband shall maintain his private life insurance policy with a death benefit of \$\_\_\_\_\_ as well as his employment related life insurance policy, currently 1x his base salary, which is approximately \$\_\_\_\_\_.

**EQUITABLE DISTRIBUTION**

**REAL ESTATE**

16. Wife and Husband jointly own real property located at \_\_\_\_\_, \_\_\_\_\_, New Jersey, which they estimate has a value of approximately \$\_\_\_\_\_. \_\_\_\_\_ is subject to a mortgage in the joint names of the parties of \$\_\_\_\_\_.

17. Husband shall retain \_\_\_\_\_ free and clear of any claim made by Wife. Wife will execute a Deed and Affidavit of Title transferring clear right, title, and interest in \_\_\_\_\_ to Husband.

18. Husband shall refinance the mortgage and remove Wife's name from same within \_\_\_\_\_ years of the entry of the Judgment of Divorce. Husband shall refinance earlier, should he miss three consecutive mortgage payments. Should Husband fail to timely refinance to remove Wife's name within \_\_\_\_\_ years of the entry of the Judgment of Divorce or upon missing three consecutive mortgage payments, if earlier, Husband shall list \_\_\_\_\_ for sale. Any expenses associated with the sale of \_\_\_\_\_, including but not limited to repairs and inspections, shall be Husband's sole responsibility without contribution from Wife. Husband shall retain the net proceeds realized from the sale and be solely responsible for any liabilities owed. Husband shall be responsible to maintain all of the expenses associated with \_\_\_\_\_ now and in the future and he shall indemnify and hold Wife harmless with respect to any debts, liabilities and claims associated with or arising from same.

**BANK ACCOUNTS**

19. Husband maintains the following bank accounts in his individual name which he shall retain free and clear of any claim made by Wife:

- a.
- b.
- c.

**RETIREMENT ACCOUNTS**

20. Husband maintains a \_\_\_\_\_ with a value of approximately \$\_\_\_\_\_ as of \_\_\_\_\_. Wife maintains an IRA through \_\_\_\_\_ with a value of approximately \$\_\_\_\_\_ as of \_\_\_\_\_. Husband and Wife shall retain their respective IRAs free and clear of any claim made by the other party.

21. Wife maintains a 401(k) with a value of \$\_\_\_\_\_ as of \_\_\_\_\_. Husband maintains a 401(k) with a value of \$\_\_\_\_\_ as of \_\_\_\_\_. The parties agree Husband commenced his participation in his 401(k) prior to the parties' marriage. As of \_\_\_\_\_ (closest date to marriage currently known), his 401(k) had a value of \$\_\_\_\_\_. The parties shall divide the marital portion of the parties' respective 401(k)s (defined as \_\_\_\_\_ to \_\_\_\_\_), including market gains and losses on the marital portion through the date of distribution. Wife's payment to Husband of \$\_\_\_\_\_ representing his interest in the distribution of the real estate, shall be offset against Husband's distribution of his 401(k).

22. \_\_\_\_\_ shall be subject to an adjustment for market gains and losses through the date of distribution.

23. The parties will retain a QDRO company to prepare the QDRO. The costs of the accountant and the QDRO company shall be the equal responsibility of the parties.

### **AUTOMOBILES**

24. Husband shall retain the \_\_\_\_\_, titled in his individual name, free and clear of any claim made by Wife. The \_\_\_\_\_ is owed by the parties and paid in full. Husband shall be solely responsible for any and all costs associated with same including, but not limited to, insurance, registration, fuel, oil, repairs, maintenance, tolls, etc. Husband shall indemnify and hold Wife harmless with respect to any debts, liabilities and claims associated with or arising from the Ford Fusion.

25. Wife shall retain the \_\_\_\_\_ free and clear of any claim made by Husband. The \_\_\_\_\_ is currently financed with a small outstanding balance. Wife shall be solely responsible for any and all costs associated with same including, but not limited to, car payments, insurance, registration, fuel, oil, repairs, maintenance, tolls, etc. Wife shall indemnify and hold Husband harmless with respect to any debts, liabilities and claims associated with or arising from the Rav 4.

### **PERSONAL PROPERTY**

26. The parties will address and divide personal property outside of this MOU.

### **DEBTS AND LIABILITIES**

27. The parties shall be responsible for any credit card debt incurred in their individual name, without contribution from the other and shall indemnify and hold the other harmless in this regard. The parties represent that their respective credit card debt is minimal.

28. The parties represent and acknowledge that there is no other marital debt for which the other party may be or is liable, other than as is specifically set forth in this Memorandum of Understanding. The parties represent and agree that neither has incurred, nor shall incur, any debt,

or made or entered into any transaction which has or will bind the other, either directly or indirectly, unless provided for in this Memorandum of Understanding. If either party has incurred any such debt and/or obligation, he or she shall be solely responsible for the payment thereof, and if the other party is called upon to make any payment or contribution toward the satisfaction of same, the responsible party shall promptly defend, indemnify and hold the other party harmless from any obligation therefore.

### **DISPUTE RESOLUTION**

29. The parties further agree that in the event they cannot resolve any dispute between them, they will participate in a least one mediation session before either party brings an application to the Court, except in the event of an emergency. Both parties agree to submit their positions to the mediator and the other party in writing prior to the first session, along with all supporting evidence, and to fully cooperate in the mediation process in an effort to minimize the need for judicial intervention. In the event that the mediation is not successful, either parent may make the appropriate application to the Court seeking a determination as to this issue.

### **MEDIATOR FEES**

30. The parties agree to share equally in the Mediator's fees and costs. Upon the finalization of this Memorandum of Understanding, the parties shall determine the total amount incurred in Mediation and their respective contributions, and shall render any payments to the other to equalize payment.

**NON-BINDING SETTLEMENT UNTIL EXECUTION OF  
WAIVER SECTION, BELOW**

By signing below, the parties are merely memorializing a non-binding, tentative settlement agreement. For purposes of use of this agreement as evidence, it should be considered, “settlement negotiations,” only, subject to becoming binding on the satisfaction of the conditions below set forth. The parties understand that their signatures do not confirm a settlement of the matter and this Agreement is not enforceable at this point. However, if this Memorandum of Understanding is attached to and incorporated by reference into a Judgment of Divorce and a Judge of the Superior Court of New Jersey or such other court having jurisdiction determines that the parties have entered into this Agreement freely and voluntarily, understanding the terms hereof and agreeing to be bound by them; or, if two independent attorneys, one representing each party, acknowledges, in writing that each has reviewed this Agreement with his/her client, that each has made all of the terms and conditions clear to his/her client as well as each party’s rights and obligations, then, in either of such an event, the parties will be bound; or if the parties sign the below Waiver of Attorney and Agreement to Make this Memorandum Binding, then in any of these three circumstances the parties are bound by this Memorandum of Understanding and it shall be interpreted as a full and final settlement of all issues derived from the dissolution of the marriage.

\_\_\_\_\_  
HUSBAND

\_\_\_\_\_  
WIFE

**Acknowledgements**

STATE OF )  
COUNTY OF )

SS:

I CERTIFY that on \_\_\_\_\_, personally came before me and acknowledged under oath, to my satisfaction, that he:

- a. is named in and personally signed this document;
- b. signed, sealed and delivered this document as his act and deed.

\_\_\_\_\_  
Notary Public, State of New Jersey

STATE OF NEW JERSEY )  
COUNTY OF )

SS:

I CERTIFY that on \_\_\_\_\_ personally came before me and acknowledged under oath, to my satisfaction, that she:

- a. is named in and personally signed this document;
- b. signed, sealed and delivered this document as her act and deed.

\_\_\_\_\_  
Notary Public, State of New Jersey



**WAIVER OF ATTORNEY AND AGREEMENT TO MAKE THIS  
MEMORANDUM OF AGREEMENT BINDING**

The parties have reviewed the terms and conditions of this agreement with the mediator and by themselves and may or may not have consulted with legal counsel with regard to the terms and conditions of this as well as their rights and obligations legally from the marriage. Nonetheless, they have chosen to accept the terms and conditions hereof without further assistance or any assistance of legal counsel. They represent that at no time were they under undue influence or duress, and that, knowing all of the undertakings set forth herein and knowing all of their rights, they freely and voluntarily enter into this agreement, waiving their respective rights to have the Court decide each issue, with or without the assistance of counsel, and substituting their judgment for the judgment of the Court. They understand that they have the right to have a full disclosure of all of the assets, liabilities and income of the other under the supervision of independent attorneys and the Court, and with their respective rights to further discovery. They agree to be bound by this agreement as if it were an order of the Court.

\_\_\_\_\_  
HUSBAND

\_\_\_\_\_  
WIFE

**Acknowledgements**

STATE OF )

SS:

COUNTY OF )

I CERTIFY that on \_\_\_\_\_, personally came before me and acknowledged under oath, to my satisfaction, that he:

- c. is named in and personally signed this document;
- d. signed, sealed and delivered this document as his act and deed.

\_\_\_\_\_  
Notary Public, State of New Jersey

STATE OF NEW JERSEY )

SS:

COUNTY OF )

I CERTIFY that on \_\_\_\_\_ personally came before me and acknowledged under oath, to my satisfaction, that she:

- c. is named in and personally signed this document;
- d. signed, sealed and delivered this document as her act and deed.

\_\_\_\_\_  
Notary Public, State of New Jersey

**CUSTODY / PARENTING TIME TRIAGE**  
**Creative and Effective Management of High Conflict Matters**

**Jeffrey Fiorello, Esq.**

With Access to the Courts becoming increasingly more difficult, high conflict matters tend to suffer the most. In some counties, Parties are waiting upwards of 12 months for a 1<sup>st</sup> Case Management Conference to be scheduled. In cases where Custody and Parenting time are highly contested, waiting a year before action is taken can have devastating results on a family. Getting our cases early intervention, is essential. Similarly, it is just as important to make sure that families are utilizing their resources on the RIGHT types of services available.

All too often in our cases, we see courts ordering the “triumvirate” of services and experts in the form of:

1. a Guardian Ad Litem;
2. a Parenting Coordinator; and
3. a Best Interest Evaluation.

Not all cases need all of these services. Furthermore, there are other services available which may be better suited address the particular issues present in a complex custody case. Not all cases are the same. Not all issues are the same. As attorneys, we should be thinking outside of the box, assess our cases, and get the right services for the families we work with.

Here are some tips to consider in addressing complex custody and parenting time issues in a case:

1. Early Intervention: Since access to the courts (in some counties) is so difficult, we may want to consider getting the parties into Mediation early in the case. A mediator may be able to assist Parties to determine what services will best serve their needs.
2. Case Management: If we are fortunate enough to have a Case Management Conference with the Court, we need to advocate for the right services. Judges do not know our cases as well as we do, nor should they be expected to. We need to request the services that will best address the issues.
3. Guardian Ad Litem (GAL): We need to understand the role of the GAL. If we are requesting that a Guardian Ad Litem be appointed in our cases, it is helpful to have the scope of the GAL’s role to be defined in the Order.
4. Parenting Coordination (PC): Can be very helpful in assisting parties in implementing a parenting plan. Not all issues are appropriate for a PC to address.

5. Co Parenting Therapy: Can help to educate parties and give them the skills necessary to raise their children together. Co Parenting Therapy can help parties improve their communication, and understand the needs and feelings of the other parent.
6. Parenting Coach: A Parenting Coach can assist a party or both parties in addressing challenges and issues in their case. A Parenting Coach can help to educate a Party to the best practices in dealing with parenting issues.
7. Reunification Therapy: Is a therapeutic process what can be used to help repair a relationship between a Parent in a Child.
8. Individual Therapy: Sometimes, a particular party or parties have personal issues that need to be addressed, to help them to cope, and improve their quality of life.
9. Best Interest Evaluation: “Best Interest” is the standard that a court must use to determine custody. However, every case does not require a full Best Interest Evaluation. Once an expert is told that they need to perform a Best Interest Evaluation, the process becomes formal, as that expert is held to defined standards in performing such an evaluation. Not every case requires a full custody assessment.
10. Brief Focused Assessment: If the issues in a case are more limited, and do not require Best Interest Evaluation, we may want to consider a Brief Focused Assessment (BFA). With a BFA, you can limit the scope of the evaluation, to address a particular issue. A BFA can usually be accomplished faster than a Best Interest Evaluation, so we can get our parties the help that is needed more expeditiously.

The issues in our cases are unique. The solutions to address those problems should not be “cookie cutter”. Understanding the issues in our cases and the different kinds of services available can be helpful in better serving the families we represent.