

**MEDIATION, CONFIDENTIALITY AND CONFLICT OF INTEREST WAIVER  
AGREEMENT**

The undersigned hereby agree to mediate a dispute regarding a possible legal separation or dissolution of marriage. The parties have agreed to consult with Wilkinson & Finkbeiner, LLP, to serve as a neutral mediator to assist the parties regarding the issues in dispute.

WILKINSON & FINKBEINER, LLP (referred to as “Mediator”),  
\_\_\_\_\_  
\_\_\_\_\_ (referred to as “Husband”), and  
\_\_\_\_\_ (referred to as “Wife”).

enter into this Divorce / Legal Separation Mediation Agreement (this "Agreement") to resolve matters relating to the dissolution of the marriage between Husband and Wife through mediation.

The issues may include, without limitation, the following:

- a. Child custody and visitation;
- b. Child and/or spousal support;
- c. Division of property; and
- d. Division of debts.

**1) CONFIDENTIALITY**

The parties understand and agree that the mediation is privileged and confidential under California Evidence Code §1115-1128, and that all communications between them and the mediator, and all documents prepared for and in the course of the mediation, if any, are privileged and confidential and may not be introduced into evidence in any civil proceeding between the parties as provided in Evidence Code §1119. The parties further understand and agree that the mediator may not testify regarding such communications or documents, unless all participants in the mediation expressly consent in writing. In that event, the party calling the mediator as a witness shall pay the mediator his normal hourly rate to serve as a witness, including preparation and travel time.

***The parties warrant and acknowledge that they have received, read and understand the provisions of California Evidence Code §§ 1115 – 1128, which is attached hereto and incorporated by reference into this Agreement.***

The parties further understand and agree that any agreement reached in mediation will not be binding until each party has had an opportunity to consider it carefully and to obtain independent legal advice about the implications of the agreement. Once signed by the parties, after time for consideration and review, any such agreement may be admissible and binding if the agreement so states.

**2) DISCLOSURE**

Both parties agree to make a complete and accurate disclosure of all information that may affect the settlement process. Husband and Wife each agree to disclose to each other and to the Mediator all of their assets and liabilities whether or not such assets or liabilities are believed to be relevant to the mediation and to provide appropriate documentation to demonstrate the accuracy of such information.

Furthermore, Husband and Wife acknowledge that in order to reach an agreement regarding an acceptable division of property, it may become necessary to secure the services of an expert to determine the value of certain assets such as land, houses, businesses, pension funds, etc.

**3) LEGAL REPRESENTATION**

Husband and Wife understand that they may be advised by their separate attorneys at any time during the mediation process. Husband and Wife further understand that Wilkinson & Finkbeiner, LLP, does not represent either party individually, and both parties are advised to seek independent legal counsel.

**4) LIMITATION OF LIABILITY**

**ALTHOUGH MEDIATOR IS AN ATTORNEY WITH EXPERIENCE IN THE PRACTICE OF FAMILY LAW, HUSBAND AND WIFE ACCEPT THAT MEDIATOR WILL NOT ACT AS THE LEGAL COUNSEL FOR EITHER HUSBAND OR WIFE OR BOTH AND WILL NOT PROVIDE OR BE CONSIDERED TO HAVE PROVIDED LEGAL ADVICE TO EITHER HUSBAND OR WIFE OR BOTH REGARDING ANY MATTER THAT IS RELATED TO THE SUBJECT OF THE MEDIATION. HUSBAND AND WIFE ACKNOWLEDGE THAT MEDIATOR MAY PROVIDE BACKGROUND INFORMATION REGARDING THE SUBJECT OF THE MEDIATION BUT THAT SUCH INFORMATION IS INTENDED SOLELY TO HELP HUSBAND AND WIFE UNDERSTAND THEIR LEGAL POSITION AND IS NOT INTENDED TO BE A COMPLETE EXPLANATION OF THEIR LEGAL RIGHTS OR OPTIONS. FURTHERMORE, HUSBAND AND WIFE UNDERSTAND THAT THEIR INTERESTS AND OBJECTIVES MAY BE INCONSISTENT WITH THE INTERESTS AND OBJECTIVES OF THE OTHER. EACH PARTY HEREBY WAIVES ANY CONFLICT OF INTEREST THAT MAY RESULT OR APPEAR TO RESULT FROM THE INFORMATION PROVIDED BY THE MEDIATOR. HUSBAND AND WIFE EACH AGREE THAT THEY ACCEPT SOLE RESPONSIBILITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, TAX COUNSEL, OR OTHER PERSON OF APPROPRIATE EXPERTISE BEFORE RELYING ON ANY INFORMATION PROVIDED BY THE MEDIATOR.**

**HUSBAND AND WIFE UNDERSTAND AND AGREE THAT WILKINSON & FINKBEINER, LLP, DOES NOT RECEIVE CASE NOTICES FROM THE COURT (SUCH AS NOTICES TO APPEAR FOR A STATUS CONFERENCE) AND THEREFORE, THE MEDIATOR AND WILKINSON & FINKBEINER, LLP, ARE NOT LIABLE FOR COURT ACTIONS, INCLUDING CASE DISMISSAL. HUSBAND AND WIFE AGREE TO IMMEDIATELY FORWARD TO WILKINSON & FINKBEINER, LLP ANY COURT NOTICES SENT DIRECTLY TO THEM BY THE COURT**

\_\_\_\_\_  
Wife's Initials

\_\_\_\_\_  
Husband's Initials

**5) PROFESSIONAL FEES**

Professional services for this matter, including but not limited to reading and other preparation time, hearing time, extra hearing time, preparation of court pleadings or forms, and any additional services or work related to this matter, will be billed at the attorney's normal hourly rate. Fees for unused scheduled time are non-refundable. The professional fee for all Wilkinson & Finkbeiner attorneys is \$300 per hour.

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6) **ADDITIONAL FEES**

- a. Expenses are billed at cost.
- b. If travel is required and is not included in the Attorney’s rate, travel time will be billed at the Attorney’s hourly rate. Travel expenses such as mileage are billed at cost.
- c. The parties will be billed for expected reading and research time.

7) **FILING FEES**

If Husband and Wife want the Mediator to prepare their Petition and related documents and/or a final Marital Settlement Agreement and related documents and file them with the proper court, Husband and Wife understand that they will be responsible for paying all required filing fees, in advance, and that such filing fees are not included in the fees paid to Wilkinson & Finkbeiner, LLP. Specifically, this Option 1 does not include preparation of such documents, and if the Mediator is to prepare such documents an additional retainer is required in the amount directed by Mediator. Such filing fees are approximately the following:

- \$435 to file the Petition
- \$435 to file the Response (or other first paper)
- \$20 to file the Stipulation and Order re: Mediation (if applicable)

Each of these checks should be made payable to: "Clerk of the Superior Court."

8) **PAYMENT**

- a. The parties agree to divide the fees and expenses for this matter as set forth above and, specifically, as follows: Shared Equally. *The parties further acknowledge that a full, non-refundable prepayment of \$900 time must be received by Wilkinson & Finkbeiner, LLP, prior to the scheduling of any mediation session.*
- b. Wilkinson & Finkbeiner, LLP will not be bound by agreements between the parties with respect to fees. *The mediation session will not be scheduled and held unless such fees and expenses are paid in advance.*
- c. The *parties are jointly and severally liable* for the payment of all fees and expenses.
- d. Include your credit card information below. Each party will have their card charged for one-half of the retainer deposit indicated above. A receipt will be emailed to you:

**Husband’s Credit Card Information**

Name on Card: \_\_\_\_\_  
 Card Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_  
 Card Security Code: \_\_\_\_\_

**Wife’s Credit Card Information**

Name on Card: \_\_\_\_\_  
 Card Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_  
 Card Security Code: \_\_\_\_\_

9) **NO GUARANTEE OF RESOLUTION; TERMINATION**

Husband and Wife acknowledge that, although Wilkinson & Finkbeiner, LLP and Mediator will use their best efforts to help Husband and Wife resolve the issues surrounding the Divorce or Legal Separation through the mediation process, Wilkinson & Finkbeiner, LLP cannot guarantee that an acceptable final resolution will occur. Either party or the Mediator can elect to terminate the process at any time. In the event that any party to this agreement believes that continuing to participate in the

mediation process is not in the best interest of Husband and/or Wife, Wilkinson & Finkbeiner, LLP or the Mediator may terminate the mediation process.

Further, we acknowledge, understand and agree that Wilkinson & Finkbeiner, LLP and mediator will use its best efforts to ensure that the online mediation session or sessions are not interrupted by technological difficulties; however, both parties agree that if such technological difficulties occur Wilkinson & Finkbeiner, LLP and Mediator shall not be liable for any resulting loss.

#### **10) SEVERABILITY AND OTHER PROVISIONS**

If any provision of this Agreement or the application of it to any party or circumstance is held to be invalid, the remainder of this Agreement and the application of such provision to other parties or circumstance shall not be affected thereby since the provisions of this Agreement are to be deemed severable in any such instance.

The Parties agree to initiate mediation or arbitration prior to litigating any dispute arising from this Agreement.

If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission of this Agreement, the prevailing party will be entitled to a judgment against the other for an amount of reasonable attorneys' fees and court and other costs incurred by the prevailing party and arising out of the litigation.

#### **11) ACKNOWLEDGMENT RE: CONFLICT OF INTEREST**

It is customary for a husband and wife to retain an attorney to mediate the dissolution of their marriage in a divorce case. However, please understand that because we are serving as a neutral mediator, we do not represent either of you as your attorney. As a result, matters that one of you might discuss with us would not be protected by the attorney-client privilege from disclosure to the other.

The Rules of Professional Conduct prohibit us from agreeing with either of you to withhold information from the other we would otherwise have had a duty to disclose. Also, each of you is entitled to full privacy and confidentiality from the other with respect to your statements regarding the facts and issues involved in the dissolution of your marriage. To the extent that we represent both of you, each is waiving that right of privacy and confidentiality.

In addition, under the Rules of Professional Conduct, we are required to disclose to you any actual or potential conflicts of interest that may arise from our representing both of your interests and to obtain your written consent to representing both of you despite such conflicts. If the two of you have a difference of opinion about the characterization or division of your property, the custody and visitation of your child or children, the payment of spousal or child support, or any other issue involved in your divorce matter, we can point out the pros and cons of such different opinions but cannot advise you on your course of action. The Rules of Professional Conduct prohibit us from advocating one of your positions over the other in this mediation.

Privilege. Anything either of you discusses with us is privileged from disclosure to third parties in a litigated matter. If we represent both of you, and a later dispute arises between the two of you, what we learned during our representation of you is not privileged vis-à-vis that dispute.

Withdrawal as Attorney. If conflicts do arise between the two of you of such nature that it is important in our judgment to perform my obligation to each of you in accordance with this letter, we may

determine that we must withdraw as your mediator, and we will advise both of you to obtain independent counsel.

Advisement to Engage Independent Counsel. Unless you advise otherwise, we will proceed and mediate the dissolution of your marriage. Again, we strongly urge you to consult with or hire independent counsel to review your matter, any agreements reached in this case, as well as any written documents before signing any agreements or papers in this matter.

If it is your intent to proceed as we have outlined herein, please sign and date this letter and return it to us at your earliest convenience.

**ENDORSEMENT**

We have read the above statement and understand its contents. We consent to having Wilkinson & Finkbeiner, LLP represent both of us on the terms and conditions set forth above consent to the appointment of Wilkinson & Finkbeiner, LLP as a neutral mediator in this matter. We understand the discussion of conflicts of interest in the letter and waive any potential conflict of interest. We agree that there shall be no confidential information between the two of us with respect to information either of us provides to Wilkinson & Finkbeiner, LLP. We acknowledge that we have been advised to seek independent counsel concerning this matter.

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

\_\_\_\_\_  
(Husband)

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

\_\_\_\_\_  
(Wife)