

FAMILY COURT MEDIATION

Rule 1 Definitions

(a) **Mediation.** Mediation is an informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial in the Family Court.

(b) **Mediator.** A neutral person who acts to encourage and facilitate the resolution of pending Family Court actions and/or ongoing family disputes. The mediator has no authority to make decisions or to impose settlement.

Rule 2 Matters Subject to Mediation

(a) **Types of Actions; Exceptions.** All issues of custody or visitation in domestic relations actions are subject to court-ordered mediation under these rules except where exempted. Contempt actions and uncontested custody or uncontested visitation issues shall be exempted. Certification that an action is exempt from court-ordered mediation shall be on a form approved by the Supreme Court.

(b) **Motion to Dispense With or Defer Mediation Settlement Conference.** A party or the court on its own motion may move to dispense with or defer the conference. Upon a showing of exceptional circumstances¹, and after a hearing, the Chief Judge for Administrative Purposes of the Family Court may grant the motion. If the parties have submitted the issues of custody and visitation to voluntary mediation with a certified mediator prior to the filing of this action, court-ordered mediation under this rule shall not be required.

(c) **Motion for Court-Ordered Mediation Settlement Conference.** A party may move the Chief Judge for Administrative Purposes of the Family Court to order mediation of any issue in controversy, or to impose special conditions on mediation, such as co-mediation, mediation with an attorney, or mediation with a mental health professional. The motion shall state the reasons why the order should be allowed and shall be served on non-moving parties.

¹ Exceptional circumstances may relate to such factors as geographic considerations, incapacity of a party, incompetency of a party, spousal abuse, substance abuse, child abuse and submission of issues of custody and visitation to voluntary mediation with a certified mediator prior to the filing of the action

Objections must be filed in writing with the court within 10 days after the date of service of the motion. Thereafter, the Chief Judge for Administrative Purposes of the Family Court shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.

(d) Voluntary Agreement to Mediate Not Prohibited. This rule does not prohibit voluntary agreement of the parties to mediate issues independent of court order except that all reporting requirements apply for any case currently filed on the docket.

Rule 3 Appointment of Mediator

(a) Eligibility. A mediator may be a person who:

- (1) Is a certified mediator under Rule 10; or
- (2) Is not a certified mediator but in the opinion of all of the parties is otherwise qualified by training or experience to mediate all or some of the issues in the action.

(b) Roster of Certified Mediators. The court in each county shall maintain a roster of mediators certified under Rule 10 who are willing to serve in the county. A certified mediator shall notify the court if the mediator desires to be added to or deleted from the roster. This roster shall be available to the public.

(c) Selection of the Mediator by Agreement of the Parties. The parties shall attempt to select a mediator within 15 days after the temporary hearing or the filing of an answer/counterclaim, whichever is earlier. Within 5 days thereafter, the plaintiff's attorney shall submit a proposed Stipulation of Mediator Selection to the court on a form approved by the Supreme Court.

The Stipulation of Mediator Selection form shall state the name of the mediator; the amount of compensation for the mediator, state that the mediator and the parties have agreed upon the compensation, and state whether the mediator is certified pursuant to these rules. Upon failure of the parties to timely select a mediator, the court shall appoint a mediator pursuant to Rule 3(d).

(d) Appointment of Mediator by the Family Court. If the parties cannot agree upon the selection of a mediator within the time frame set out in Rule 3(c), the plaintiff's attorney shall immediately notify the Chief Judge for Administrative Purposes of the Family Court in writing and request that a mediator be appointed. If no Stipulation of Mediator Selection is timely filed as set forth in Rule 3(c), the court shall select a mediator from the roster of mediators on a rotating basis or at the discretion of the court. The Order Appointing Mediator shall be

issued upon a form approved by the Supreme Court and shall be served on the mediator and on the parties by the Clerk of Court.

(e) **Disqualification of Mediator.** Any party may move before the Chief Judge for Administrative Purposes of the Family Court in the circuit where the action is pending for an order disqualifying the mediator. If the mediator is disqualified, an order shall be entered appointing a replacement mediator pursuant to Rule 3. Nothing in this provision shall prohibit mediators from disqualifying themselves.

Rule 4 Mediation Conferences

(a) **Participation.** The parties shall participate in at least three mediation conferences unless an agreement is reached sooner.

(b) **Where the Conferences are to be Held.** Mediation conferences shall be held within the county where the case is filed at a site designated by the mediator, or at any other site agreed upon by the parties and the mediator.

(c) **When the Conferences are to be Held.** The initial mediation conference shall be held within 30 days of the filing of the Stipulation of Mediator Selection or Order Appointing Mediator. Mediation shall be completed within 90 days after the initial mediation settlement conference, unless otherwise ordered by the Chief Judge for Administrative Purposes of the Family Court.

(d) **Discovery, Motions and Trial.** The case will not be called for trial during the period allotted for mediation. Extension of time allotted for mediation must be in writing. An extension may not be routinely granted, but the court shall grant an extension only upon a showing of good cause. The mediation conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter which would preclude the trial of the case following the period allotted for mediation, except by order of the court.

(e) **Scheduling.** The mediator shall set the schedule for conferences and may recess a conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(f) **Privacy.** Mediation conferences are private. Other persons, including attorneys, may attend only with the permission of the parties and mediator.

Rule 5

Duties of the Parties, Representatives and Attorneys

(a) **Duty to Inform.** All attorneys should fairly and objectively inform their clients about mediation.

(b) **Notice to Mediator.** The plaintiff's attorney shall notify and confirm the availability of the mediator prior to filing the Notice of Selection of Mediator.

(c) **Mediation Intake Form.** The parties or the plaintiff's attorney shall provide to the mediator a completed Mediation Intake Form prior to the scheduling of the initial session. The Mediation Intake Form shall be a form approved by the Supreme Court.

(d) **Mediation Agreement.** The parties shall execute and abide by the terms of a mediation agreement. The mediation agreement form shall be approved by the Supreme Court.

(e) **Cooperation.** The parties and their attorneys shall cooperate with the mediator and shall comply with the mediation agreement.

(f) **Confidentiality.**

(1) The Order Appointing Mediator shall provide that communications during mediation settlement conferences shall be confidential. If the mediator is selected by stipulation, the Stipulation of Mediator Selection shall also provide that communications during the mediation settlement conferences shall be confidential.

(2) Additionally, the parties must execute an approved mediation agreement that protects the confidentiality of the process.

(3) To that end, the parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

(A) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(B) Admissions made by another party in the course of the mediation proceeding;

(C) Proposals made or views expressed by the mediator;

- (D) The fact that another party had or had not indicated willingness to accept a proposal for settlement; or
 - (E) Records, reports or other documents created solely for use in the mediation.
- (4) Threats of harm or attempts to inflict physical harm made during the mediation sessions shall not be deemed confidential.
 - (5) Any persons who are not parties who attend mediation sessions or participate in the mediation sessions shall also sign a Confidentiality Agreement consistent with this Rule.

(g) Threats or Actions Occurring During Mediation Conference. Nothing herein shall prohibit a party from seeking relief under the Parental Kidnapping Act (PKA) or the domestic abuse statutes as a result of threats or actions occurring during a mediation conference.

Rule 6 Sanctions for Failure to Attend

(a) Failure to Attend. If a person fails to attend a scheduled mediation conference without good cause, the court may impose upon the party any lawful sanctions, including, but not limited to the payment of attorney's fees, mediator's fees, and expenses incurred by persons attending the conference; and, contempt.

(b) Failure to Pay. If a party fails to comply with the compensation provisions of the court order, the court may impose upon the party any lawful sanctions, including, but not limited to, contempt and additional mediator's fees and costs.

Rule 7 Authority and Duties of Mediators

(a) Authority of Mediator. The mediator shall at all times be authorized to control the mediation conferences and the procedures to be followed.

(b) Duties. The mediator shall set up the initial mediation session after receiving the completed Mediation Intake Form from both parties. The mediator shall define and describe the following to the parties at the beginning of the conference:

- (1) The process of mediation;

- (2) The difference between mediation and other forms of conflict resolution;
- (3) The fact that the mediation conference is not a trial; that the mediator is not a judge, jury or arbitrator; and that the parties retain the right to trial if they do not reach a settlement;
- (4) The inadmissibility of conduct and statements as evidence in any arbitral, judicial or other proceeding;
- (5) The circumstances under which the mediator may meet alone with either of the parties or with any other person;
- (6) Whether and under what conditions communications with the mediator will be held in confidence during the mediation conference;
- (7) The duties and responsibilities of the mediator and the parties;
- (8) The fact that any agreement will be reached by mutual consent of the parties; and
- (9) The costs of the mediation.

(c) Confidentiality. Information disclosed to a mediator by parties, attorneys, or other participants in the course of mediation shall not be disclosed by the mediator, except for information concerning child abuse or threats of harm required by law to be reported, threats of physical harm or attempts to inflict physical harm, or information the parties agree to disclose. All records, reports, and other documents received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled by subpoena or otherwise to disclose such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum. Confidential information disclosed to a mediator by parties or by witnesses in the court of mediation shall not be divulged by the mediator.

(d) Private Consultation. The mediator may meet and consult individually with any party or parties, their counsel, or other participants during mediation.

(e) Duty of Impartiality. The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(f) Memorandum of Agreement. Upon the parties reaching an agreement, the mediator shall provide a Memorandum of Agreement to the parties, attorneys of record, and guardians ad litem of record.

(g) **Declaring Impasse.** It is the duty of the mediator to timely determine when the mediation is not viable, than an impasse exists, or that the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

(h) **Reporting Results of Mediation.** Upon the parties reaching an agreement or an impasse, the mediator shall immediately file a certificate of agreement or impasse with the court in writing. South Carolina Court Administration may require the mediator to provide statistical data for evaluation of the mediation.

(i) **Immunity.** The mediator shall not be liable to any person for any act or omission in connection with any mediation conducted under these rules.

Rule 8 Compensation of the Mediator

(a) **By Agreement.** When the mediator is stipulated to by the parties, compensation shall be agreed upon between the parties and the mediator.

(b) **By Court Order.** When the mediator is appointed by the court, each mediator shall be compensated by the parties at an hourly rate of \$100 per hour unless otherwise ordered by the Chief Judge for Administrative Purposes of the Family Court or agreed upon by the mediator and the parties; provided that the court-appointed mediator shall charge no greater than one hour of time in preparing for the initial mediation conference, and shall not be entitled to charge for travel time, unless otherwise ordered by the Chief Judge for Administrative Purposes of the Family Court in the circuit.

(c) **Mediation Costs.** The mediator is entitled to compensation not only for time involved in the mediation process, but also for reasonable and necessary costs.

(d) **Payment of Compensation by the Parties.** Unless otherwise agreed to by the parties or ordered by the court, fees for the mediation settlement conference shall be paid in equal shares per party. Payment shall be due at the beginning of each conference unless other arrangements are made with the mediator.

(e) **Indigent Cases.** A party may move before the Chief Judge for Administrative Purposes of the Family Court in the circuit to be exempted from payment of mediation fees based upon indigency. Determination of indigency shall be in the sole discretion of the court. Appointment of a mediator in pro bono cases shall be discretionary with the Chief Judge for Administrative Purposes of the Family Court in the circuit.

Rule 9
Board of Arbitrator and Mediator Certification

There is hereby established a Board of Arbitrator and Mediator Certification. The Board will be composed of 5 persons appointed by the Supreme Court for a term of 3 years. In the event of a vacancy on the Board, the Supreme Court shall appoint someone to fill the unexpired term. Three members of the Board shall constitute a quorum. In the event that members of the Board disqualify themselves in a pending matter leaving less than a quorum, the Supreme Court may appoint ad hoc members to restore the Board to full membership in that matter.

Rule 10
Mediator Certification

The Board shall receive and approve applications for certification of persons to be appointed as mediators. The application shall be on a form approved by the Supreme Court. For certification, a person must:

- (a) Either:
 - (1) Be a member in good standing of the South Carolina Bar; or
 - (2) Be admitted to practice law in the highest court of another state or the District of Columbia and meet the following qualifications:
 - (A) Be at least 21 years old;
 - (B) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association or the Supreme Court under Rule 402(c)(3), SCACR;
 - (C) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;
 - (D) Have not been disbarred or suspended from the practice of law and is not the subject of any pending disciplinary proceedings in any other jurisdiction;
 - (E) Have not, within the last five (5) years, been denied admission to a bar for character or ethical reasons or disciplined for professional misconduct;

- (F) Be an associate member of the South Carolina Bar in good standing; and,
 - (G) Agree to be subject to the Rules of Professional Conduct, Rule 407, SCACR, and the Rule on Disciplinary Procedure, Rule 413, SCACR, to the same extent as an active member of the South Carolina Bar; or,
- (3) Be a licensed psychologist, licensed master social worker, licensed independent social worker, licensed professional counselor, licensed associate counselor, licensed marital and family therapist, or licensed physician specializing in psychiatry, under Title 40 of the 1976 Code of Laws, as amended;
- (b) Have completed a minimum of 40 hours in a family court mediation training program certified by the Supreme Court or its designee, or any other training program attended prior to the promulgation of these rules and approved by the Court;
 - (c) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina;
 - (d) Be of good moral character;
 - (e) Has not, within the last 5 years, been denied a professional license or disciplined for character or ethical reasons or for professional misconduct in this State, any other state or the District of Columbia;
 - (f) Pay all administrative fees established by the Supreme Court; and
 - (g) Agree to provide mediation to indigents without pay.

Rule 11
Approval of Mediation Training Programs

(a) Requirements for Training. Approved training programs for mediators in the Family Court shall consist of a minimum of 40 hours of instruction. The curriculum of such programs shall at a minimum include:

- (1) Statutes, rules and practice concerning family and related law in South Carolina;

- (2) Conflict resolution, family dynamics, and mediation theory in general, as well as specific training regarding domestic violence;
- (3) Mediation processes and techniques, including the process and techniques of trial court mediation;
- (4) Standards of conduct for mediators;
- (5) Statutes, rules and practice governing mediation settlement conferences in South Carolina;
- (6) Demonstrations of mediation conferences;
- (7) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and
- (8) Such other requirements as the Supreme Court from time to time may decide are necessary for good instruction.

(b) Approval of Training. A training program must be approved by the Supreme Court or its designee before such program can be used for compliance. Approval need not be given in advance of training attendance.

Training programs attended prior to the promulgation of these rules or attended in other states may be approved by the Supreme Court if they are in substantial compliance with the standards set forth in this Rule.

(c) Administrative Fees. The Supreme Court may set administrative fees which must be paid in advance of approval.

Rule 12

Standards of Conduct, Decertification and Discipline of Mediators

(a) Standards of Conduct for Mediators. Any person serving as a mediator, whether certified or not, shall comply with the Standards of Conduct for Mediators which is attached as Appendix A to these Rules.

(b) Decertification of Mediators. Certification under Rule 10 may be revoked at any time if it is shown that the mediator no longer meets the requirements to be certified under Rule 10 or that the mediator has failed to faithfully observe these Rules, the ethical standards of Rule 12(a), or has engaged in any conduct showing an unfitness to serve as a mediator.

(c) **Discipline of Mediators.** A mediator who violates these Rules, the ethical standards of Rule 12(a), or who has engaged in any conduct showing an unfitness to serve as a mediator may, in addition to decertification under Rule 12(b), be subject to discipline by the Supreme Court. This discipline may include any sanction the Court determines is appropriate, to include an order publicly reprimanding the mediator for the conduct, an order barring the mediator from serving as an arbitrator or mediator in any court of this State for a definite or indefinite period of time, an order requiring the mediator to complete additional training, and/or the assessment of a fine. The fact that discipline is taken against an attorney under this Rule shall not preclude action against the attorney under Rule 413, SCACR, if the conduct is misconduct under that Rule.

(d) **Processing Complaints of Misconduct by Mediators.** Persons alleging that a mediator has engaged in misconduct may file a complaint with the Board of Arbitrator and Mediator Certification. Misconduct includes any conduct or other circumstances which would warrant decertification or discipline under Rule 12(b) and (c). The Board shall review these complaints, may require the mediator to file a response to the complaint, may conduct such investigation as it deems appropriate, and may dismiss complaints it finds to be without merit. The Board may petition the Supreme Court to temporarily suspend a mediator pending further action on the complaint. If the Board finds that there is probable cause to believe that misconduct has occurred which would warrant decertification or other disciplinary action under these Rules, the Board shall conduct a hearing into the matter after giving the mediator at least 10 days notice of the hearing. The Board may issue subpoenas compelling persons to attend the hearing or to produce records. A person violating such a subpoena shall be in contempt of the Supreme Court. The rules of evidence applicable to the circuit court shall generally be observed in the conduct of the hearing and all testimony shall be under oath or affirmation. The proceedings shall be transcribed. If, after conducting the hearing, the Board determines that decertification or other disciplinary action is not warranted, it shall dismiss the matter. If the Board determines that decertification or other disciplinary action is appropriate, it shall make a written recommendation to the Supreme Court and provide a copy to the mediator. A copy of the transcript of the hearing and any exhibits shall be filed with the Supreme Court. The mediator may, within 15 days after the Board submits its recommendation to the Supreme Court, file a response to the Board's recommendation. The Supreme Court shall then take such action as it deems appropriate. The Court shall not be bound by any specific sanction recommended by the Board. No hearing shall be held before the Supreme Court unless it determines that a hearing is appropriate.

Rule 13 Clerks of Court

All Clerks of Court in each county shall perform whatever duties are required pursuant to these rules relating to record keeping, notification to the court, parties, or attorneys, docket control, maintenance of rosters, and service of orders, etc.

Rule 14
Local Rule Making

These rules shall be uniform for all counties in which they are applicable. Local rules may be allowed only upon approval of the Supreme Court.

Rule 15
Application of Rules

These Rules shall apply to cases filed on or after their effective date in those counties designated for court ordered arbitration.

APPENDIX A

STANDARDS OF CONDUCT FOR MEDIATORS¹

I. Self-Determination: A Mediator Shall Recognize that Mediation Is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement.

COMMENTS:

- * The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given an opportunity to consider all proposed options.
- * A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

II. Impartiality: A Mediator Shall Conduct the Mediation in an Impartial Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

COMMENTS:

- * A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.

¹ These Standards are taken from the Standards of Conduct for Mediators promulgated by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

- * When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- * A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

III. Conflicts of Interest: A Mediator Shall Disclose All Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate Unless All Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct that Occurs During and After the Mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

COMMENTS:

- * A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.
- * Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressures from outside of the mediation process should never influence the mediator to coerce the parties to settle.

IV. Competence: A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

COMMENTS:

- * Mediators should have available for the parties information regarding their relevant training, education and experience.
- * The requirements for appearing on a list of mediators must be made public and available to interested persons.
- * When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

V. Confidentiality: A Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. A mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

COMMENTS:

- * The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.
- * If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- * In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement

offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

- * Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- * Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

VI. Quality of the Process: A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

COMMENTS:

- * A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- * Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- * The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs significantly from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should therefore refrain from providing professional advice.
- * Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute

through arbitration, counselling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other professions.

- * A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.
- * A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- * Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

VII. Advertising and Solicitation: A Mediator Shall Be Truthful in Advertising and Solicitation for Mediation.

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

COMMENTS:

- * It is imperative that communication with the public educate and instill confidence in the process.
- * In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

VIII. Fees: A Mediator Shall Fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

COMMENTS:

- * A mediator who withdraws from a mediation should return any unearned fees to the parties.
- * A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- * Co-Mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- * A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

IX. Obligations to the Mediation Process.

Mediators have a duty to improve the practice of mediation.

COMMENTS:

- * Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

STATE OF SOUTH CAROLINA)
)
 _____ COUNTY)
)
)
 _____)
 Plaintiff)
)
 vs.)
)
)
 _____)
 Defendant)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**AGREEMENT
 REGARDING MEDIATION PROCEDURES**

Docket No. _____

THE UNDERSIGNED PARTIES and their attorneys hereby agree that the above matter shall be submitted to a mediated settlement conference pursuant to the applicable rules, guidelines, and Order of the Court having jurisdiction over this matter, and further acknowledge and agree that:

1. Mediation conferences are private. Other persons, including attorneys, may attend only with the permission of the parties and the mediator.
2. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:
 - (a) Views expressed or suggestions made by another party with respect to possible settlement of the dispute;
 - (b) Admissions made by another party in the course of the mediation proceeding;
 - (c) Proposals made or views expressed by the mediator;
 - (d) The fact that another party had or had not indicated willingness to accept a proposal for settlement; or,
 - (e) Records, reports or other documents created solely for use in the mediation.
3. Information concerning child abuse or threats of harm required by law to be reported, threats of physical harm or attempts to inflict physical harm, or information the parties agree to disclose is not confidential.
4. The mediator may meet and consult individually with any party or parties or their counsel during the conference. Confidential information disclosed to a mediator by parties or by witnesses in the course of mediation shall not be divulged by the mediator.
5. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

6. The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received by the mediator while serving in that capacity shall be confidential.

7. The mediator shall have no liability for any act or omission in connection with mediation conducted under these rules.

8. The parties understand that the mediator does not represent any party, and does not provide legal or financial advice. Parties not represented by counsel are urged to seek legal advice from an attorney and to obtain financial advice as needed from qualified professionals.

Dated _____, 19 _____, and signed before commencement of the mediated settlement conference by each of the persons whose signatures appear below.

Plaintiff(s)

Defendant(s)

The undersigned attorneys acknowledge that communication during the mediated settlement conference shall remain confidential pursuant to Rule 5(f), Rules of Family Court Mediation.

Attorney for Plaintiff(s)

Attorney for Defendant(s)

(If there are more parties or attorneys participating in the mediated settlement conference than provided for in the space above, they may sign below or on an additional page which shall be attached to this agreement.)

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

_____ COUNTY)

_____ JUDICIAL CIRCUIT

Plaintiff)
VS.)

Defendant)

ORDER APPOINTING MEDIATOR

Docket No. _____

TO: _____
Name of Court-Appointed Mediator

Mailing Address

City, State, Zip Code

Telephone/Fax Number

Pursuant to Family Court Mediation Rule 3, the court appoints you as mediator in this case. The initial mediated settlement conference is to be held within 30 days of this Order, and the mediation shall be completed within 90 days of the initial mediated settlement conference. I certify that I have mailed a copy of this order to the parties, or their attorneys, as follows:

Pursuant to Family Court Mediation Rule 5(f), you are notified that communications during mediation settlement conferences shall be confidential, and of Family Court Mediation Rule 7(c) which provides:

(c) Confidentiality. Information disclosed to a mediator by parties, attorneys or other participants in the course of mediation shall not be disclosed by the mediator, except for information concerning child abuse or threats of harm required by law to be reported, threats of physical harm or attempts to inflict physical harm, or information the parties agree to disclose. All records, reports, and other documents received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled by subpoena or otherwise to disclose such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum. Confidential information disclosed to a mediator by parties or by witnesses in the course of mediation shall not be divulged by the mediator.

Name of Plaintiff/Plaintiff's Attorney

Mailing Address

City, State, Zip Code

Telephone

Name of Defendant/Defendant's Attorney

Mailing Address

City, State, Zip Code

Telephone

NOTICE TO PARTIES: You are required to provide to the Mediator a completed Mediation Intake Form immediately.

Date

Clerk of Court

STATE OF SOUTH CAROLINA)
)
 _____ COUNTY)
)
)
)
 _____)
 Plaintiff)
)
)
)
 vs.)
)
)
)
 _____)
 Defendant)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**FAMILY COURT
 COVER SHEET**

Docket No. _____ - DR - _____ - _____

This Family Court Cover Sheet and the information contained on it neither replaces nor supplements the filing and service of pleadings or other papers as required by statute or rule. This form is required for the use of the Clerk of Court for the purpose of initiating the Family Court docket. **IT MUST BE FILLED OUT COMPLETELY, SIGNED, DATED AND SERVED ON THE DEFENDANT(S).**

NATURE OF ACTION

- MARRIAGE DISSOLUTION
 - Annulment
 - Divorce
 - Miscellaneous
- EQUITABLE DISTRIBUTION
 - Equitable Distribution
- ADOPTION
 - Adoption
 - Miscellaneous
- TERMINATION PARENTAL RIGHTS
 - TPR (not part of another action)
 - TPR/Adoption
- PROTECTIVE SERVICES
 - Abuse & Neglect-DSS
 - Abuse & Neglect-Removal/Custody
 - PDA - Adult
 - PDA - Minor
 - Miscellaneous

- SUPPORT/CUSTODY
 - Sep.Maintenance/Support
 - Support - Child(ren) only
 - Support - Spouse only(alimony)
 - Support - Children and Spouse
 - Support - Child - DSS/OCSE
 - Support - Modification
 - Support-Modification-DSS OCSE
 - Support - UIFSA
 - Support - UIFSA - DSS OCSE
 - Support - Register Foreign Order UIFSA
 - Support - Register Foreign Order UIFSA - DSS OCSE
 - Child Custody
 - Child Custody and Support
 - Establish Visitation
 - Establish visitation - DSS
 - Modify visitation
 - Modify visitation - DSS

- SUPPORT/CUSTODY(cont.)
 - Establish paternity
 - Establish paternity-DSS OCSE (may inc. establish support)
 - Miscellaneous
- OTHER DOMESTIC RELATIONS
 - Name Change
 - Abortion for Minor
 - Correct Birth Records
 - Miscellaneous
- CONTEMPT OF COURT
 - Support - Child Only
 - Support - Spouse only
 - Support - Child and Spouse
 - Visitation-brought by custodial parent
 - Visitation-brought by non-custodial parent
 - Miscellaneous

DOCKETING INFORMATION

_____ This action involves custody or visitation and is, therefore, subject to mediation. SEE REVERSE SIDE FOR IMPORTANT INFORMATION OR REQUIREMENTS FOR FAMILY COURT MEDIATION.

_____ This action is exempt from mediation, and Certificate of Exemption is attached.

Date: _____

 Signature of Plaintiff/Plaintiff's Attorney

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED ISSUES OF CUSTODY OR VISITATION. IF THE DOCKETING INFORMATION ON THE REVERSE SIDE OF THIS COVER SHEET INDICATES THAT THIS CASE IS SUBJECT TO MEDIATION YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT YOU ARE REQUIRED TO TAKE THE FOLLOWING ACTIONS:

1. You are required to select a mediator by the time of a temporary hearing or within sixty (60) days of the filing of the summons and complaint, whichever first occurs. Within 5 days thereafter, the plaintiff's attorney shall either submit a proposed Stipulation of Mediator Selection to the Court, or make a written request that a mediator be appointed by the court.
2. Both parties are required to submit a Mediator Intake Form to the Mediator, immediately upon selection of the mediator by consent, or upon appointment of the mediator by court order.
3. The initial mediation conference shall be held within 30 days of the filing of the Stipulation of Mediator Selection or Order Appointing Mediator. Mediation shall be completed within 90 days after the initial mediation settlement conference, unless otherwise approved by the Chief Judge for Administrative Purposes of the Family Court.
4. Motion of a party to be exempted from payment of mediator fees should be made to the Chief Judge for Administrative Purposes of the Family Court upon receipt of this notice.

Please Note: Attendance at mediated settlement conferences are mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

STATE OF SOUTH CAROLINA)
)
 _____ COUNTY)
)
 _____)
 Plaintiff)
)
 vs.)
)
 _____)
 Defendant)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**MOTION TO
 DEFER MEDIATION**

ORDER GRANTING/DENYING MOTION

Docket No. _____

THE UNDERSIGNED MOVES THIS COURT to defer court-ordered mediated settlement conference in this matter because:

For these reasons, it is requested that this court enter an order setting forth the following schedule for court-ordered mediated settlement conferences:

1. Mediator to be selected by consent on or before _____.
2. Initial mediation settlement conference to be held on or before _____.
3. Mediation to be completed on or before _____.

Movant certifies to the court that opposing counsel or pro se opposing parties have been contacted regarding this motion, and that they:

- _____ 1. Consent to this deferral;
- _____ 2. Join in this motion for deferral;
- _____ 3. Oppose this motion for deferral but do not request to be heard;
- _____ 4. Oppose this motion for deferral and request a telephone conference or other hearing.

_____, 19 _____
 Signature of Attorney for _____

ORDER

_____ The Motion to Defer Mediation is **DENIED**.
 _____ The Motion to Defer Mediation is **GRANTED** upon a showing of exceptional circumstances, based on the facts:

IT IS FURTHER ORDERED:

1. The parties shall select a mediator by _____ (date). If they are unable to consent to selection of a mediator by that time, the plaintiff shall notify the court, and request the court to appoint a mediator from the court-approved list.
2. The mediator shall schedule the initial mediation settlement conference by _____ (date).
3. The mediation shall be completed by _____ (date).

 Date Signature of Judge

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

Plaintiff

MOTION TO DISPENSE

vs.

WITH MEDIATION

Defendant

ORDER GRANTING/DENYING MOTION

Docket No. ____ - DR - ____ - _____

I make this motion before the Chief Judge for Administrative Purposes of the Family Court of this Circuit for an Order dispensing with mediation as required by Rules of Family Court Mediation, because of these exceptional circumstances:²

_____.

Date: _____

Signature: _____

NOTICE TO PARTY MAKING MOTION TO DISPENSE WITH MEDIATION: Copy of this Motion, together with Notice of Hearing, must be served upon opposing party or counsel. Original Motion, Notice of Hearing and Certificate of Service must be filed with Clerk of Court.

ORDER

_____ The Motion to Dispense With Mediation is ***DENIED***.

_____ The Motion to Dispense With Mediation is ***GRANTED*** upon a showing of exceptional circumstances based upon these facts:

_____.

Date: _____

Signature of Chief Judge for Administrative Purposes

²Exceptional circumstances may relate to such factors as geographic considerations, incapacity of a party, incompetency of a party, spousal abuse, substance abuse, child abuse and submission of issues of custody and visitation to voluntary mediation with a certified mediator prior to the filing of the action.

STATE OF SOUTH CAROLINA)
)
 _____ COUNTY)
)
)
)
 _____)
 Plaintiff)
)
 vs.)
)
)
)
 _____)
 Defendant)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**REQUEST FOR APPOINTMENT
 OF A MEDIATOR**

Docket No. _____

Pursuant to Rule 3(d) of the Rules for Family Court Mediation, the Plaintiff advises the court:

1. A temporary hearing has been held or sixty (60) days have elapsed since the filing of the summons and complaint (whichever date is earlier); and,
2. The parties have not been able to agree upon the selection of a mediator.

Therefore, the Plaintiff requests that the Court appoint a mediator in this case.

Date: _____

 Signature of Plaintiff/Plaintiff's Attorney

STATE OF SOUTH CAROLINA

)
)
)

IN THE FAMILY COURT

_____ COUNTY)
)

_____ JUDICIAL CIRCUIT

Plaintiff)

CERTIFICATE OF EXEMPTION

vs.)

Defendant)

Docket No. _____

I certify that this action is exempt from mediation, because:

___ This is a contempt action;

___ This action involves issues of custody or visitation, but these issues were submitted to mediation with a certified mediator prior to filing this action; or,

___ Custody and visitation are not contested in this action, and

The parties have agreed that custody shall be with plaintiff/defendant (circle one) and that agreed visitation rights are as follows: _____

Date: _____

Signature of Attorney for _____

STATE OF SOUTH CAROLINA

)

IN THE FAMILY COURT

_____ COUNTY)

_____ JUDICIAL CIRCUIT

Plaintiff)

MEDIATION INTAKE FORM

vs.)

Defendant)

Docket No. _____

This form is to be completed by each party participating in the mediation. Please give information **only about you**.

This mediation is () Voluntary () Court-Ordered

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

Employer: _____ Occupation: _____

Date of Birth: _____ Social Security Number: _____

Attorney: _____

Attorney's Address: _____

City: _____ State _____ Zip Code: _____

Attorney's Telephone: _____

Other Party's Name: _____

Date of Marriage: _____

Parties are now () living together () separated, living apart since _____ (date)

Children:

Name	Sex	Age	Residing With
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Needs of Children? _____

What issues do you propose to mediate? _____

Date: _____ This form prepared by: _____ (Signature)

STATE OF SOUTH CAROLINA)
)
 _____ COUNTY)
)
)
 _____)
 Plaintiff)
)
 vs.)
)
)
 _____)
 Defendant)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

MEDIATOR'S REPORT

Docket No. _____

1. Mediated settlement conferences were held before me on _____, 19 ____;
 _____, 19 ____; and, _____, 19 ____.
2. As a result of these conferences, this case should be (check one):
 ___ A) considered SETTLED.
 ___ B) considered AT AN IMPASSE .
 ___ C) NEGOTIATED FURTHER BY COUNSEL.
 ___ D) MEDIATED FURTHER (I ___am/___am not willing to mediate this case further).
 ___ E) Other _____
3. A. Plaintiff ___was/___was not present.
 B. Defendant ___was/___was not present.
4. Other participants were:
 ___ attorney for plaintiff
 ___ attorney for defendant
 ___ guardian ad litem
 ___ experts
 ___ others:_____
5. This case was co-mediated with:_____
 Co-mediator ___ is/___is not an attorney.
6. Choice of the mediator was by ___Stipulation of Mediator Selection/___Court Order.
7. Issues mediated were:
 ___ Custody
 ___ Visitation
 ___ Other:_____.
8. The total number of hours spent in mediation was _____ hours.

9. The total mediator fees were: \$_____.

10. Both parties ___were/___were **not** prepared to meaningfully discuss settlement of the case. If not prepared, it was for these reasons (DO NOT list facts of the case. List reasons such as: seriously disputed facts, pending motions, lack of discovery, lack of authority, party did not appear, case inappropriate for mediation, etc.)_____

_____.

11. Meaningful settlement negotiations ___ **did**/___**did not** take place.

12. Additional settlement conferences ___ **would**/___**would not** be useful.

13. I ___**am**/___**am not** an attorney.

14. Further comments of the mediator:

_____.

Date:_____

Signature of Mediator:_____

Print Name of Mediator:_____

STATE OF SOUTH CAROLINA)
)
 _____ COUNTY)
)
)
)
 _____)
 Plaintiff)
)
 vs.)
)
)
)
 _____)
 Defendant)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**STIPULATION OF
 MEDIATOR SELECTION**

Docket No. _____

THE PARTIES hereby select the following person as mediator under Rule 3, Rules of Family Court Mediation.

 Name of Mediator

 Mailing Address of Mediator

 City, State, Zip Code

 Telephone Number

- By the submission of this form, the parties and counsel hereby certify to the court:
- A. This selection of mediator is consented to by all parties;
 - B. The proposed mediator has consented to serve;
 - C. The parties, counsel, and mediator have agreed upon the amount of compensation as set forth above (subject to any application by a party to be declared indigent);
 - D. The parties will submit Mediation Intake Forms to the Mediator immediately; and,
 - E. _____ The proposed mediator is certified pursuant to court rules; or,
 _____ The proposed mediator is not certified pursuant to court rules, but in the opinion of all parties is otherwise qualified by training or experience to mediate all or some of the issues in this action.

The undersigned understand that communications during the mediated settlement conferences shall be confidential pursuant to Rules 5(f) and 7(c), Rules of Mediation, except for information concerning child abuse or threats of harm required by law to be reported, threats of physical harm or attempt to inflict physical harm, or information the parties agree to disclose (see Rule 7(c), Rules of Family Court Mediation).

WE CONSENT:

 Date

 Date

 Plaintiff/Attorney for Plaintiff

 Defendant/Attorney for Defendant