

Cindy A. Wagner Fischer, LCPC/NCC
Counseling/Mediation

AGREEMENT TO MEDIATE

This is an Agreement To Mediate made and entered into this _____ day of _____, 20____, by and between _____ and _____ and the mediator(s). The terms of this agreement are fully represented below and the parties and the mediator(s) agree to the following:

1. MEDIATION PROCESS

The parties hereby agree to attempt to resolve through mediation the issues that have arisen between them. The goal of such mediation is to reach an agreement which is acceptable to both parties and serves the best interests of their children.

2. CONFIDENTIALITY OF MEDIATION

The parties and the mediator(s) agree to keep confidential, thus not discuss or disclose to anyone other than the parties, the mediator, and the attorneys, all information, written documents, and oral communications discussed and/or disclosed during mediation, unless agreed to by the parties and/or their attorneys. No information obtained during mediation will be given to any outside individual, entity, or organization, unless both parties concur and/or their attorneys.

The limitations on confidentiality of information developed through mediation does not apply to disclosures by each party to their respective attorneys. Nor does it apply, and the parties do consent, to the mediator communicating with the parties' attorneys, with the understanding that the mediator will discuss specifics individual to each party only to that party's respective attorney.

The parties understand and agree that the mediation process is a process that attempts to settle all outstanding issues between them. Given this, statements made by either or both parties during mediations sessions will not be admissible in any court or administrative proceeding. The parties further agree that neither will call as a witness the mediator(s) or any person doing mediation under his or her direction or auspices, in any subsequent court or administrative proceeding. The parties also agree that neither will subpoena any records, documents, or other information or material the mediator(s) may have in their file or may have produced during the mediation process or in furtherance of working with the parties.

3. PRIVACY OF MEDIATION

The parties agree neither will use any information discussed or disclosed during mediation in a malicious or harmful way or in any way that would discredit the other party, or in a way that does not serve their children's best interest.

4. INFORMATION NOT HELD CONFIDENTIAL

The safety of all parties, children, and any other persons is of utmost concern. The parties understand that the mediator(s) will not keep confidential any information that causes the mediator(s) to suspect that child abuse or harm to a child or children has occurred or may occur, or that any person is or could be in danger. The parties understand and agree the mediator(s) will do what is necessary as they see fit or he/she/they will notify someone of their concern, which may include calling attorneys, DCFS, the police, or any other individual, entity, or organization.

5. FULL DISCLOSURE

If the parties are mediating financial issues, then each party agrees to fully and honestly disclose all information requested by the mediator(s). Such information may include, but is not limited to individual income, children's expenses, financial statements, income tax statements, income tax returns, property or business evaluations, documentation as to value of assets and degree of indebtedness, or any other information needed in furtherance of the mediation process or to enhance settlement. Subsequent findings of nondisclosure by either party could cause the mediation process to end and could constitute grounds for nullification of any agreements.

6. PARTIES' COMMITMENT

The parties agree to use their best efforts to reach a fair and equitable resolution of the issues. Toward that end, they agree that each will abstain from using any mood-altering substance, drug, or alcohol on the day mediation sessions are scheduled. The parties further agree neither will bring any weapons, including guns or knives, to mediation.

7. USE OF MEDIATORS

The parties and the mediator(s) agree that the mediator(s) will provide a fair and neutral process to all parties during mediation and will assist the parties in reaching a solution to the issues raised. The mediator(s) reserves the right to verbally inform the parties or note in any written agreement if he or she does not concur with any provision of the agreement or the full agreement reached by the parties. Concurrence is defined as the mediator's belief that the agreement is fair and reasonable to both parties and serves the best interest of the children. Lack of mediator concurrence will have no effect on the parties' ability to reach agreement and carry out any and all terms of the agreement.

The mediator(s) do not serve in any other capacity such as offer legal advice or counseling, regardless of his or her professional education or background. The mediator(s) do not prepare or file legal documents, such as Joint Parenting Agreements or Marital Settlement Agreements; the mediator(s) prepares a document depicting all of the parties' agreements reached in mediation, which may be entitled Memorandum of Agreement or Summary of Negotiations. Further, the mediator(s) do not represent either party during mediation or subsequent to mediation in any action that would involve the terms of their agreement or their divorce.

8. USE OF ATTORNEYS

The parties are strongly encouraged to consult with attorneys throughout the mediation process in order to understand their legal rights. Attorneys chosen by the parties will be regarded as part of the mediation team. This means that the mediator(s) are free to discuss all issues related to the mediation with any attorney retained or consulted by parties in mediation. It is assumed that any agreement reached in mediation will be reviewed by an attorney and then processed in court.

9. FILING FOR DIVORCE

Mediators do not give legal advice, file for divorce, or represent anyone in court.

10. SEPARATE MEETINGS

The parties agree not to discuss their case with the mediator(s) outside of the mediation session. However, the mediator(s) may request to meet with the parties separately or put parties in separate rooms during the process, to facilitate negotiation and settlement. When the parties are meeting separately with the mediator(s) or negotiate through the mediator(s) while in separate rooms, these arrangements continue to offer parties the ability to keep control of the outcome of the terms of their settlement and to maintain ownership of their final agreement.

11. TRANSFERENCE OF PROPERTY

During the mediation process, neither party unless agreed to by the parties and/or their attorneys, will transfer, conceal, or in any way dispose of tangible or intangible property.

12. TERMINATION OF MEDIATION

Mediation is a voluntary process. Any person in mediation may terminate the mediation at any time. However, the parties agree that, if they wish to terminate, they will do so during a session.

13. IMPASSE

If the people involved in mediation are unable to reach an agreement about any or all issues, they and the mediator will discuss options for resolution of the issues. These options may include separate sessions with the mediator(s), referral of particular issues to other professionals, or suspension or termination of mediation.

14. COSTS OF MEDIATION

The parties agree to compensate the mediator(s) \$_____per hour. The parties agree that payment for each mediation session shall be paid to the mediator at the time of each mediation session. The parties also agree to pay a deposit of \$_____at the initial mediation session for services performed outside of mediation, to be billed at the same hourly rate as is billed during the mediation session. Services performed outside of mediation sessions include phone calls with the parties, their attorneys, and other individuals; preparation of correspondence, written agreements, document review, research of issues; and anything else needed for the mediator to responsibly serve the parties.

The mediator(s) will document time spent outside the sessions, and at the end of the mediation process will send a final bill showing all time spent on the case by the mediator(s) in and out of mediation sessions and any monies owed to the mediator(s) or owed by the mediator(s) to the parties by a refund. The parties will receive from time to time statements showing services rendered to date and dollars billed for such services. Time is billed to the nearest five minute increment.

If it becomes necessary to pursue payment for an outstanding balance, legally or otherwise, the party owing the money agrees to pay for all expenses of collection, including legal fees, court costs and time spent to pursue payment, as incurred by my office or any other entity. Once a Judgment is entered, the law allows 9% interest to accrue if the debt is not paid per the terms of the Judgment.

15. NOTICE OF CANCELLATIONS

The parties agree that if it is necessary for one or both parties to cancel a scheduled session, they will do so at least 24 hours in advance. If the parties cancel less than one full business day in advance of the appointment, they will be charged for two hours of the mediator's time.

16. FINANCIAL RESPONSIBILITY

Unless the parties or the court directs otherwise, the parties are equally responsible for payment of the costs of mediation and services outside of mediation.

We have read, understood, and agree to be bound by the above Agreement to Mediate.

Date

Party

Date

Party

Date

Mediator

Mediator

Date

**Cindy A. Wagner Fischer, LCPC/NCC
Mental Health Counselor and Mediator
68 S. Main Street / P.O. Box 81
Oswego, Illinois 60543
630-842-2247**