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MARITAL MEDIATION

DESCRIPTION

Since about 1998 our law firm encourages couples having trouble with issues of control and power (i.e. money, use of time, etc.) to use mediation to reach a legal Agreement addressing those issues, thereby strengthening the marriage or other relationship. In July, 2010 our Supreme Judicial Court upheld such contracts as long as there is no duress or fraud. In our mediation process the couple jointly hires a member of the firm as their mediator, not their lawyer or counselor. During a series of meetings the couples work on their own time and with the mediator to identify their own issues and develop a mutually satisfactory plan to address them, including exchange of financial information and whatever sharing of control and responsibility they consider best for them. Both are free to consult with a lawyer, financial planner or other advisor at any time. The process is designed to help the couple strengthen their marriage, and in many cases it has.

Once an Agreement is reached, the mediator will write a draft of a Marital Agreement for each spouse to review with his or her advisor before signing. The Agreement may be admissible in evidence if the couple desires, and may be enforced by a court.

THE REQUIREMENT OF COMMITMENT

Marital mediation works only if the couple is willing to make a good faith effort to reach agreement. There is no legal obligation to agree. Any commitment to mediation and to make the resulting Agreement work comes voluntarily from the couple.

SOME BENEFITS OF MEDIATION

The process of negotiating and writing a legal Agreement can change behavior in the relationship. Just identifying what the couple is arguing about is itself healthy. Creating personal solutions will give the marriage or relationship a greater life expectancy. Children thrive in the absence of parental conflict.

THE COST OF MEDIATION

John Fiske, Barbara Richmond and Susan Matthew charge \$425 an hour for their services. Most couples take about ten hours of mediator time, over whatever period they wish. Couples pay John as they go, since does not request a retainer. Barbara and Susan use a retainer at the outset, to be defined by the couple and mediator and applied against time worked, with any unearned balance returned when the mediation has ended.

Satellite Office:
880 Boston Road, Suite 9

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MEDIATION AND FEE CONTRACT

We wish to define the terms of a Marital Agreement to help us stay married, as simply and sensibly as possible. We have read the description of Marital Mediation. Each of us agrees to participate fully in this effort to define our future behavior in order to improve our marriage.

We agree to hire _____ as mediator at an hourly rate of \$425 plus costs. We agree to share the expense of the mediation equally from our joint account or else _____ % by the Wife and _____ % by the Husband.

We realize our mediator shall not represent either or both of us as an attorney at any time in connection with our Marital Agreement. During the mediation we agree to disclose **ALL** aspects of our financial situations. Each of us is free to consult her or his own advisors at any time.

We agree that all communications in mediation, including all notes, homework, draft contracts and other writings, are completely confidential under this Agreement and by Section 23C of Chapter 233 of the Massachusetts General Laws. Neither of us can seek testimony of the mediator or disclosure of her or his file in connection with any court proceeding related to this Agreement.

We realize the mediator is in charge of the mediation process and (s)he will give each of us equal time as much as possible, whether our sessions are together or separate, and (s)he will not take sides other than to help guide us to a reasonable agreement designed to help us stay married. We realize we are not required to mediate any issue or to reach agreement on any issue.

Spouse

Spouse

I have received \$ _____ at \$425 per hour from _____ and \$ _____ at \$ _____ per hour from _____ in accordance with the terms of this Marital Mediation and Fee Contract.

Date: _____

Mediator

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Some Issues to Address in a Marital Agreement

THE "EASY" PART: What Do We Want to Do Better?

Discussing Finances

- Joint accounts
- Separate accounts
- Joint and Separate accounts
- Budgeting: who gets to spend what
- When do we have to consult each other about spending anything?
- Who has to make what?
 - "Am I free to goof off if I want?"
 - "What if the company wants me to move?"

Property

- Who owns what
- In whose name do we hold property
- Transfers of property within the marriage
- Tax consequences
- Property held jointly with another

Financial Estate Planning

- Savings
 - Children's education, Retirement, Vacations, Cushion
 - Security is a woman under a roof
- Borrowing
 - Home equity loans and mortgages
 - Credit cards
- Wills
- Trusts, living and testamentary
- Life Insurance
- Estate tax consequences

Creation of Rights and Responsibilities

- The process of reaching an Agreement
- Do we agree the Agreement is legally admissible in evidence in any court action, whether we are married, separated or divorced

Other Issues That May Arise

Raising the Children

- Who feeds them, takes care of them, arranges for sitters and day care?
- Who helps with their homework?
- When do I have to be with them?
- What time do I have to be home for dinner? (Good luck with this one)
- Who takes them to the doctor?

Cooking and Running the Household

- Who plans meals, buys food, prepares food, and cleans up?
- Who shovels the driveway, landscapes, fixes things around the house, cleans the house?

Sexual Relations

- How often do we have sex and under what circumstances?
- How do we make decisions about sex?
- What do we want our Marital Agreement to say, if anything?

What Else Do You Want to Talk About?

- Family, individual or joint counseling
- Other issues

THE HARD PART: What Happens if We Don't Do It?

- a. If the Agreement is NOT legally enforceable because
 1. no court will force you to stay married
 2. no court will force specific performance of the promises in your Agreement
 3. no court will make either of you pay money damages to the other
 4. the Agreement fails to meet standards of fairness, full disclosure, legal consideration and other basic requirements
 5. you just don't want to sue your spouse

- b. If the Agreement IS legally enforceable because
 1. you agree you want it to be enforceable
 2. you agree the Agreement is admissible in evidence
 - a. in a suit between the two of you to require your spouse to carry out the agreement
 - b. in a divorce action
 - c. in an action for separate support (a legal separation)
 3. you assign property rights and cover other subjects in traditional premarital agreements
 4. you periodically carry out specific terms of your agreement, and
 5. you define specific consequences from failure to comply with specific responsibilities. "Without a remedy, you have no right."