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CREATIVE SOLUTIONS ADR, LLC

*Focused on children, providing  
a framework for parents!*

## MEDIATION CLAUSES

Issues Triggering Mediation

Identify The Parameters

Examples of Pitfalls

### MEDIATION CLAUSES IN PARENTING PLANS: DRAFTING CONSIDERATIONS

There are many reasons that non-emergency mandatory mediation clauses are included in parenting plans. Commonly, it is to provide an opportunity for resolution prior to the filing of post judgment motions by the parties. Parenting plans are designed to reflect a set of circumstances at a particular time and place. Many forces cause parenting plans to become ineffective over time, no longer suiting the needs of the family.

Most commonly, the children themselves age out of the effectiveness and utility of the parenting plan, thus requiring a simple tune up. More challenging, the family may be facing obstacles related to blended families, illnesses, relocation or other life events necessitating alterations in the parenting plan.

In order to maximize the results of these provisions for our clients, below are some considerations when drafting the clause:

- Identify who is to mediate. Specific professionals should be identified, or at the very least, the type of professional (e.g. co-parenting counselor, attorney mediator, etc.). The goal is to minimize the conflict over the selection of a mediator. Pitfall: Identifying prior professionals that were not mediators for the role, such as an evaluator or a GAL, is inappropriate and blurs their role with the family. Those professionals may need to continue in their former role if the matter is brought back to court.
- Identify the types of issues that are anticipated to be the subject of mediation. Some examples include: alterations to the access schedule based on new activities, change of schools, change of parents' employment, etc.
- Identify how the mediation shall be initiated whether by one parent or mutual agreement. The provision should include the timing of the mediation in relation to the filing of any motions. If before the filing of the motions, it is beneficial to include a minimum number of sessions necessary.
- Identify the fees and how they are to be paid. If you are identifying a specific professional, it is advisable to reference the specific fees charged, or if not, a range of fees plus allocation between the parties. The order is then clear as to the financial commitment the parties are undertaking. Pitfall: do not include punitive fee allocation clauses that require the mediator to potentially reallocate the fees. To be able to maintain neutrality of the mediator, any reallocation or punitive financial consequences for misuse of the mediation process should be left to the Court.
- Identify whether the process is to be considered in the nature of negotiation. It is common that one party would like to bring in the mediator to testify as to the content of the process. Clarity up front will resolve the issue for the parties as well as alert the mediator to any potential of being called as a witness.

Mandatory mediation clauses are a valuable tool for parents as a way to resolve their emerging post judgment disputes outside of the Court process. As with most provisions in parenting plans, the more specific and inclusive, the more effective they are in their implementation.

#### ***Creative Solutions ADR:***

Creative Solutions ADR is a child focused alternative dispute resolution resource center, spearheaded by Attorney William RJP Brown, for parents and families to step outside of the litigation arena and place their issues and needs in a private environment where the skills and dedication of various professionals can assist in a resolution that is tailored to the unique facets of each family.

Attorney Brown's litigation background is integrated with the training and work he performs as a mediator, a Family Special Master at the Regional Family Trial Docket, his extensive experience as a guardian ad litem, continued professional development and his network of mental health professionals. Our services include traditional mediation, issue specific mediation, dual discipline mediation and Parenting Coordination.

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