

G R A H A M & G R A H A M , P . C .
L a u r a B . G r a h a m , E s q .
D i v o r c e M e d i a t i o n

Re: Mediation

This letter accompanies materials describing the mediation process and how I, hired as a mediator, would look forward to assisting you and your spouse in defining the terms of your divorce or separation. The benefits of the process for you, your spouse, and your children are also summarized and a sample fee agreement is also included.

Mediation will work only if both parties are willing to make a good-faith effort to reach agreement. Both must be prepared to make full disclosure of their assets and income. Mediation is also not appropriate if one spouse has engaged in a pattern of abuse such that the victim is unable to negotiate on his or her own behalf. If, after reading the enclosures, the process appears useful to you, I would suggest that you give your spouse these materials for review. Either of you can then call me with questions.

If you would both like to try this process, one of you should call my office or send me an email to set up an appointment. The first half-hour of your first appointment is free of charge to give you both an opportunity to determine whether you would like to use my services. At the end of our first half-hour, I will give you the opportunity to begin mediation for the balance of the time set aside for you (1½ hours) at my hourly rate, as determined by my sliding fee scale (a description of which follows in the materials). My preference is for both spouses to share in this expense to ensure that everyone is equally “invested”.

As your mediator, I do not act as counsel for either of you. My job is to help you each identify your wants and needs, facilitate communication between you, and finally help you to brainstorm solutions to obstacles that we encounter. I encourage the use of counsel during the process and will happily provide you both with a list of attorneys that I know to be “mediation friendly”. For the reasons set forth in the materials that follow, I hope you will give mediation a chance before litigating your divorce.

Very truly yours,
Laura B. Graham

ENCLOSURES

MEDIATION DESCRIPTION

The Family Mediation Process

I am an attorney experienced in divorce law, offering divorcing, separating and other couples a fair process in which they can discuss and decide for themselves arrangements for their children, support and property division. The husband and wife jointly hire me to act, not as the attorney for either or both, but as a neutral mediator. During a series of mediation sessions the couple works out a mutually satisfactory plan covering the children's living arrangements, the financial needs of each member of the family, the home and other assets, and debts of the parties. Both are encouraged to consult with a lawyer or other advisor at any time. The process is designed to reduce the adversarial element often encountered in a divorce proceeding and also to save time and money. The goal is a "win-win" for all parties, as each becomes better able to appreciate the legitimate concerns and interests of the other and to apply their creative problem solving skills to reach resolution of disputed issues.

Once an agreement is reached, I will write a draft for the husband and wife to review with his or her lawyer before signing. Once the agreement is signed by the parties, it is presented to the Probate Court Judge for final approval. Only upon the Judge's approval does the agreement become an order of the court, binding upon both parties.

The Requirement of Commitment

The mediation process will work only if the husband and wife are willing to make a good faith effort to reach agreement. There is no legal obligation to agree; any commitment to the process and its result comes voluntarily from the people involved.

The Benefits of Mediation

The mediation process can be significantly less expensive and less painful for the family than a protracted battle, which is often part of divorce or other family litigation. When children are involved, studies indicate divorce agreements mutually agreed upon by husband and wife are usually better for the children than those imposed by court order. The process offers an opportunity for divorcing or divorced parents to begin to operate within the framework that will be required for the duration of their children's minority. Just as practice makes perfect in everyday life, the opportunity provided by mediation to practice treating one another with courtesy allows the habit to become second nature the more often it is employed. The structured process allows the husband and wife to establish their own goals and to design for themselves, with help, the best way to use their own resources.

The Cost of Mediation

I charge per hour for mediation time. Payment is due at the time services are rendered on a pay as you go basis, rather than requiring payment of a large retainer fee. I believe this system helps to keep the “up-front” costs manageable and ensures that you will never pay for more time than you need to use. You may already be aware of the fact that most divorce lawyers (myself included) require the payment of an initial “retainer fee”, which typically ranges from \$3,500 to \$7,500+ with additional retainers required as the case progresses and the original retainers are depleted. Although retainers paid to divorce lawyers are refundable if the total number of hours paid in advance are not used, retainers still represent a significant “up-front” cost that can be prohibitive to many. By using my services as a mediator, you can avoid that front-loaded expense. Furthermore, if you consult with an attorney while going through the mediation process, most will permit you to hire them on a pay-as-you-go basis so long as mediation is progressing and there is no need for them to file an appearance with the Probate Court.

I have adopted a Sliding Fee Scale. All income listed below is combined family income from all sources, whether taxable or non-taxable. The breakdown is as follows:

Combined Family Income	My Hourly Rate
Less than \$50,000/yr.	\$125/hr. - \$375 flat fee for agreement prep
\$50,000 – 74,999.99/yr.	\$175/hr. - \$525 flat fee for agreement prep
\$75,000 - 99,999.99/yr.	\$225/hr. - \$675 flat fee for agreement prep
\$100,000/yr. and up	\$250/hr. - \$750 flat fee for agreement prep

So that you can calculate the likely final cost of mediation, you should know that most couples take about ten hours of mediator time to complete their agreement, although your process may be either faster or slower depending upon your circumstances. At the end of our mediated time, I will prepare an agreement for your review. I charge a flat fee for the agreement preparation, which must be paid before I deliver the draft of the agreement. This flat fee also covers the cost of helping you to prepare the basic court forms required for filing. Upon receipt of the completed draft of your agreement, if “minor” changes to which both parties can agree are required, I make those at no extra charge. To the extent substantive modification of the agreement is required, we would schedule additional mediation time and pay on an as-used basis until we had finalized the agreement. At that point, a \$50.00 revision fee (applicable to all fee levels) would be charged prior to the release of the modified agreement.

The Appointments

Appointments are scheduled in advance and are for two-hour blocks of time. Unless an appointment is canceled 48 hours in advance of the scheduled meeting, a one-hour cancellation charge of my hourly rate will apply, as I will have been prevented from scheduling others into your two-hour block. Clients are charged for the full two hour block (except for the initial meeting, for which they are charged for only 1 ½ hours), regardless of time of arrival or time of conclusion of the session. In other words, there are no rebates for conclusion of a session fifteen minutes early, neither is there credit given for sessions beginning fifteen minutes late. Sessions will not run over two hours, as it is important to pace yourself during the mediation process.

SOME OBSERVATIONS ABOUT MEDIATION

- The family usually knows better than anyone outside what is best for its members.
- When spouses can decide for themselves, there is a reduction in feelings of frustration, anger and helplessness.
- When spouses can talk and listen to each other, each feels less threatened by the other.
- Self-determination, rather than an order imposed by a court, reduces conflict and increases the chance for compliance with a plan developed by the parties themselves.
- When parents can reduce their conflict over any issue, their children benefit directly.
- People will change during and after the divorce. A plan worked out by them can be more flexible in adapting to their changed circumstances.
- By hiring a mediator to help them work out an agreement, parents can save themselves time, money and frustration.
- Approaching the divorce process with a win/lose mentality ensures that everyone, especially any children involved, loses.
- Even a “successful” use by one spouse of the court system to secure a “win” all too often ends up as a loss in the long run.

SAMPLE MEDIATION AND FEE CONTRACT

We wish to obtain a Massachusetts divorce as simply and as sensibly as possible. We have read the mediation description by Laura B. Graham and are willing to make a good faith effort to reach an agreement.

We agree to hire Laura B. Graham as mediator at an hourly rate of \$250.00 per hour. We agree to pay all resulting mediation fees and costs set forth in the accompanying materials in the following manner: _____% by the Husband and _____% by the Wife.

We understand that the mediator we hire shall not represent either or both of us as an attorney at any time in connection with our divorce. During the mediation, we agree to disclose fully and document all aspects of our financial situations. We understand that the documentation requested by the mediator will **not** be returned to us. We understand we may consult our own respective attorneys and other professionals of our own individual choosing at any time and, in fact, are encouraged to do so.

The mediator has discussed with us that she may prepare a Divorce Agreement and the accompanying Probate Court forms for Divorce at our request. We understand that Laura Graham may be acting as an attorney for us in this capacity only, and only after she has determined that there has been substantial and complete agreement between the two of us and that she can draft such an instrument fairly and adequately represent both our interests. We have been advised by her of the benefits to us of using independent legal counsel to advise us throughout the mediation process and to review the agreement prior to our signing it. We have discussed and understand the foregoing with the mediator and hereby give our informed consent that she may prepare the Divorce Agreement and Probate Court Forms to file for Divorce.

We agree that all communications in mediation, including all notes, homework, draft agreements and other written material, are completely confidential, both by this agreement and by Section 23C of Chapter 233 of the Massachusetts General Laws. Thus we agree also that neither of us will seek to obtain the testimony of the mediator or the disclosure of the mediator's file in conjunction with any court proceeding. Without waiving the foregoing, we each agree that our mediator may listen to concerns voiced by our respective lawyers and/or counselors. We further agree that the mediator may disclose information about our mediation, without the use of our names, in the interest of continued supervision and education. We understand that the mediator is in charge of the mediation and that she will give each of us equal time as much as possible during the process. We understand this to be so whether mediation sessions take place together or separately. The mediator will not take sides other than to help guide us to a reasonable and realistic agreement. We also understand we are not required to agree to mediate any issue or to reach agreement on any issue.

Husband

Wife

TYPICAL SEQUENCE OF MEDIATED ISSUES

I. Parenting Plans (including custody) and Temporary Living Arrangements

II. Budget and Child Support

III. Property Division

IV. Asset and Liability Division

V. Insurance Benefits and the Divorce Process

Issues of particular concern to both parties may be discussed “out of order”.

WHO I AM

I have been practicing divorce law since 1991, seven years of which were with the law firm of Graham & Harsip, P.C. in Acton, Massachusetts. I am also a member of the Massachusetts Bar Association, the American Bar Association, the Massachusetts Council on Family Mediation and the Association for Conflict Resolution (where I have earned the title of Practitioner Member).

I obtained my law degree from the University of North Carolina in Chapel Hill. Immediately after law school, I worked for one of the large established firms in Durham, North Carolina as a family lawyer/litigation associate. As a litigation associate, I seemed to devote most of my time to making the world safe for tobacco interests. I knew it was time to move on when one of my former clients turned to me with complete candor and scoffed at the “so-called cancer cases” his company was forced to defend as the result of the cigarettes and other tobacco products they sold.

By 1994 I was experiencing, first-hand, the emotional roller coaster of my own divorce. The experience certainly helped me to better understand the attendant feelings of confusion, mistrust, and rage that I had seen from a professional distance in my divorce practice. The experience continues to teach me, all these years later, that the ability to maintain civility in the face of divorce is an ongoing requirement if children are to grow up to become happy and healthy adults in their own right, capable of entering into committed relationships themselves in the future.

I am pleased to say that I am the proud mother of three children: all grown and busy pursuing their respective dreams (not to mention self-supporting!), and five grandchildren (each bundles of joy and energy). To keep our own hearth and home from getting too dull, my husband and I have two cats and one large, shaggy dog. It is almost exactly like living with two teenagers and a toddler, all over again.