DRAFTING MEDIATION FORMS
THAT WILL MAKE A DIFFERENCE

Wendy S. Burgower
And
Charlotte D. Rainwater
Law Office of Wendy S. Burgower
3303 Louisiana, Suite 145
Houston, Texas 77006
(713) 529-3982

Advanced Family Law Drafting Course
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Born Houston, Texas.

Education:
Admitted to Bar, 1979, Texas; also admitted to practice before U. S. Court of Appeals, Fifth and Eleventh Circuits; U. S. District Court, Southern District of Texas. Preparatory education, University of Texas (B.A. Plan II, 1976); legal education, University of Houston, Bates College of Law (J.D., 1979). Board Certified, Family Law. Texas Board of Legal Specialization, 1985.

Member:
Houston (Board Member, Family Law Section, 1987-90) and American Bar Association; Texas Trial Lawyers Association; Association of Women Attorneys (President, 1986-87; Gulf Coast Family Law Specialists (Board Member/Secretary, 1987-88), (President 1989-90); Texas Academy of Family Law Specialists; Association of Women Attorneys (Past President); American Academy of Matrimonial Lawyers; Texas Family Law Council, 1994-1999.

Papers and Publications:

1999 - Wendy S. Burgower, Director
22nd Annual Marriage Dissolution Institute
State Bar of Texas
San Antonio, Texas
May 13-14, 1999

1998 - Wendy S. Burgower
"Presenting the Right to Establish Legal Residence to a Jury"
24th Annual Advanced Family Law Course - State Bar of Texas
San Antonio, Texas
August 17-20, 1998

1997 - Wendy S. Burgower, Walter P. Mahoney, Jr., Judy L. Warne
"The Basics of Custody, Visitation and Support, Both Original and Modification"
23rd Annual Family Law Seminar - State Bar of Texas
San Antonio, Texas
August 18-21, 1997

1996 - Wendy S. Burgower
"What JMC Means in "96"
6th Annual Family Law Conference
South Texas College of Law
April 25 - April 26, 1996
1994 - Wendy S. Burgower
"A Survey of Clients"
17th Annual Marriage Dissolution Institute
State Bar of Texas
Spring, 1994

- 20th Annual Advanced Family Law Course
"The Texas Family Lawyer.... How Others View Our Performance ---
Client, Jurors, and Judges Tell Us What They Think"
State Bar of Texas
August 15 - August 18, 1994

1993 - Wendy S. Burgower, Joan F. Jenkins
"A Survey of Jurors in Texas Family Law Cases -
An Analysis with Juror Comments"
16th Annual Marriage Dissolution Institute - State Bar of Texas
May 13 - May 14, 1993

- Wendy S. Burgower
"Taking and the Proper Courtroom Use of Deposition"
Family Law for the General Practitioner and the Legal Assistant
South Texas College of Law,
Houston (April 15-16, 1993)

1991 - Wendy S. Burgower
"Tips for Drafting the Final Decree"
Family Law for the General Practitioner and the Legal Assistant
South Texas College of Law,
Houston (March 21-22, 1991)

- Wendy S. Burgower, Joan F. Jenkins
"A Survey of Jurors in Texas Family Law Cases -
Analysis and Commentaries"
Fifth Annual Texas Academy of Family Law Specialists Trial Institute
January 30 - February 1, 1991

1990 - Wendy S. Burgower, Jo Jenkins
Marriage Dissolution Seminar - State Bar of Texas (May, 1990)

- Wendy S. Burgower, Jean Guez
"Use of the Non-Testifying Psychologist": Houston Bar Association/
Houston Psychological Association
4th Annual Psychological & Family Law Seminar, Houston (March, 1990)

1989 - Chairperson, Divorce Litigation Support Seminar, Houston Bar Association and
Houston T.S.C.P.A. Foundation, Houston (March, 1989)

- "Attorney-Client Privilege", Oral presentation; Houston Bar Association
- Family Law Section Annual Out of Town Institute,
- Acapulco (April, 1989)

- Wendy S. Burgower - "Brainwashing", South Texas College of Law
  Seminar: Domestic Torts; Austin, Houston (March, April, 1989)

- "Miscellaneous Closing Documents", State Bar Family Law for the Experienced
  Non-Specialist; Speaker for two cities (October, November, 1989)

1988 - Wendy S. Burgower - "Long Arm Jurisdiction - Our Friend in Mexico",
  Oral presentation, Houston Bar Family Law Section (1988)
- Co-Chairperson, Psychologist & Family Law - A Compulsory
- Partnership; One day seminar Houston Bar Family Section and
- Houston Psychological Association (April, 1988)
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I Introduction
Mediation forms make a difference in many ways. First, they can alleviate confusion for everyone concerned and allow the mediator to lay out the plan for a successful mediation. Good forms allow the mediator to focus on the issues and keep track of the mediation, thus having a better opportunity for settlement. Finally, carefully drafted settlement forms deter repudiation and promote successful conflict resolution.

II Pre-Mediation Forms
As the mediator, your initial correspondence with the attorneys that have requested your services should include a Letter of Confirmation, Memorandum Regarding Preparation For The Mediation Session, Agreement To Mediate Family Dispute In Litigation, General Rules For Mediation, and Memorandum Regarding Mediation Fees.

A Letter of Confirmation
Your Letter of Confirmation should include confirmation that you have been selected as the mediator and the date on which the mediation is scheduled to occur. The length of the mediation should be included in your letter, as well as a reminder to dress casually and prepare to work through lunch. Briefly, discuss tips for successful mediation and the attachments that have been sent along with the letter. A copy of your curriculum vitae should be sent along with this letter, unless your business card has more information on it. Enclose a copy of the Letter of Confirmation along with its attachments marked "Client's Copy" as a courtesy to the attorneys for forwarding to their clients. Request that any proposed decree, inventory, proposed division, or any other document which would assist in the preparation of a mediated settlement agreement be brought on a computer disk or in hard copy form.

B Memorandum Regarding Preparation For The Mediation Session
The Memorandum outlines for the attorneys and their clients the steps to take to prepare for a successful mediation. Setting yourself up for mediation success means preparing the mediator. If the mediator is prepared your client will receive the benefit of saving time and your client's money. The memorandum should contain a request that each attorney prepare a brief statement outlining the issues in dispute in the case, their positions on the issues, and their opponent's position on each such issue. The status and substance of any offers and counteroffers on the issues should be requested from the attorneys. If there are unusual legal issues, request citations to any authorities that may help you as the mediator in understanding the issues. Request other documents that may help you, in understanding the issues, such as an inventory, proposed property division, financial information statement, social studies, and psychological evaluations.

C Agreement To Mediate Family Dispute In Litigation
The Agreement to Mediate should include as an attachment the General Rules For Mediation. A statement in the Agreement to Mediate should reflect that the parties have read the General Rules For Mediation and all of the other attachments to the Agreement to Mediate. The Agreement to Mediate should contain a clause that the parties acknowledge and have been told that the mediator does not represent anyone and will not represent anyone, nor will the mediator render any legal services to the parties. A confidentiality clause should be inserted into the Agreement to Mediate which explains to the parties that all communications between them and the mediator are privileged and confidential and that the parties' rights to subpoena the mediator and/or his records have been waived. An exception to the communications between the parties and the mediator concerns any allegations of physical or sexual abuse of a child, any allegations of this nature must be reported to the proper authorities. A statement to this effect in bold type should be included in your Agreement to Mediate. The Agreement to Mediate should be signed by both parties, their attorneys, and the mediator.

D General Rules For Mediation

The General Rules for Mediation lay out the ground rules that the mediator expects the parties and their counsel to follow throughout the procedure. Additionally, the General Rules explain the process of mediation. The General Rules should explain to the parties that mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The General Rules should include a statement reflecting that the parties have agreed to the mediation and that the parties consent to the appointment of the named individual as their mediator. The General Rules may contain the conditions precedent to serving as the mediator, which include provisions explaining the neutrality of the mediator. The authority of the mediator should be explained in the General Rules. The mediator does not have the authority to decide any issues for the parties, his/her authority is limited to facilitating the voluntary resolution of the dispute by the parties. Obtain a commitment from the parties to participate in the proceedings in good faith with the intention to settle, if at all possible. The mediator does not warrant or represent that settlement will result from the mediation process. Include a statement reflecting that all persons necessary to the decision to settle are present at the mediation. Make this statement in bold to draw the parties' attention to it. The last thing that you want is to go through hours of mediation only to find that an essential person is not in attendance. Confidentiality needs to be fully explained to the parties in the General Rules. There will be no stenographic record taken of the mediation and no person is allowed to tape record any portion of the mediation session. No subpoenas, summons, complaints, citations, writs, or other process may be served upon any person at or near the site of the mediation session upon any person entering, attending, or leaving the session. The parties and their attorneys need to know prior to mediation that this type of conduct will not be tolerated as it is not conducive to settlement. The parties and their attorneys should be made aware that only the mediator has the authority to terminate the mediation process. An Exclusion of Liability clause should be included, providing that the mediator nor any law firm employing the mediator shall be liable to any party for any act or omission in connection with any mediation conducted under the General Rules. Interpretation and application of the General Rules will be done by the mediator. Explain the payment of fees and expenses. It may be helpful to attach an additional document; Memorandum Regarding Mediation Fees.
E Memorandum Regarding Mediation Fees
Explain the different types of fee schedules that you offer and the time frame of each. Additionally, explain that the parties or their attorneys are responsible for paying the mediation fee prior to the mediation. Include a clause for non-payment stating that the mediation fee must be paid prior to the commencement of the mediation. In the memorandum, detail for the parties and their attorneys the acceptable methods of payment for your services. You may have different fee schedules for different types of mediations, be sure that this is clearly explained in your Memorandum on Fees.

III Helpful Forms To Use During Mediation
Spreadsheets can be an extremely helpful tool in any mediation. They allow the mediator to keep track of negotiations and areas of settlement. Many types of spreadsheets can be developed and tailored for the issues in your session. The most commonly used spreadsheets are those used for property division and those used for the allocation of parental rights and duties. These types of spreadsheets allow for great ease when the time comes to draft up the parties' settlement agreement.

A Property Division Spreadsheet
If you receive the parties' inventories or a party's inventory prior to the mediation you can put the items of property along with their respective values on a spreadsheet to facilitate the division of these items. A similar spreadsheet can be created to list the parties' debts and the allocation of same. The information generated on these two spreadsheets can be used to ascertain the net value of the parties' marital estate.

B Allocation of Parental Rights and Duties Spreadsheet
This type of spreadsheet is used in child-custody related mediations. All rights, duties, privileges, and other child related issues are taken from the Texas Family Code and transferred into spreadsheet format allowing for their allocation during the mediation. This allows the mediator a handy reference to the agreements between the parties regarding which parent has which right and which rights are to remain joint rights.

IV The Settlement Agreement
The goal of each mediator is to facilitate a settlement in each mediation session. Certain items are required by statute to make a settlement agreement binding. The statutory requirements for settlement agreements resulting from divorce mediations and settlement agreements resulting from parent-child mediations are now the same. Other clauses, such as arbitration clauses can be added to a settlement agreement to avoid disputes over the drafting of the resulting decree or temporary order.

A Divorce Mediation Settlement Agreement
Pursuant to Texas Family Code §6.602(b), a mediated settlement agreement is binding on both parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;
(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

B Parent - Child Mediation

The Texas Family Code §153.0071(d) states, a mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

C Arbitration Clause

Disputes often arise over the drafting of the decree or temporary order that were the result of a mediated settlement agreement. The mediator can avoid these conflicts by including an arbitration clause in the mediated settlement agreement allowing the mediator to arbitrate any disputes that arise from the drafting of the decree or temporary order. An example of such clause follows:

ANY DISPUTES ARISING FROM
THE DRAFTING OF THE FINAL
DECREE OF DIVORCE SHALL BE
DECIDED BY BINDING
ARBITRATION WITH MEDIATOR
SERVING AS ARBITRATOR.

V Conclusion

Mediation is the current Golden Child in the area of alternative dispute resolution in the state of Texas. The mediation process should be used in cases where negotiations between counsel have failed. As the mediator your goal is to attempt to facilitate a binding settlement agreement between the parties involved. Careful drafting of your documents can lead you to reaching your goal in a timely and efficient manner.
Re: CAUSE NO. 9999999; In the Matter of the Marriage of Williford Wife and Harold Husband; In the 999th Judicial District Court of Harris County, Texas

Dear Counsel:

The purpose of this letter, first of all, is to confirm that you and your clients have been ordered to engage in mediation and that I have been selected to act as mediator in this case. I have reserved the date of Wednesday, February 24, 1999, for mediation beginning at 9:00 a.m. in my office. I understand it will last a full day.

I am enclosing an Order of Referral for Mediation. I would appreciate your signing and faxing the approved order back to my office in order that I may sign the original with your permission and file it with the court.

Please provide me with any documents you deem relevant to the mediation, especially those outlined on the enclosed Memorandum Re: Preparation For the Mediation Session.

In order for the mediation process to work, it is necessary that:

1. All individual parties participate in the process with adequate discretion, authority, and information to make final and binding decisions.
2. Adequate time be allocated for the process (generally at least one full day); and
3. All parties and their counsel commit to give their best good faith effort to resolve the case by agreement, if possible.

Enclosed is the Agreement Concerning Referral of Case To Mediation which, together with its various exhibits, constitutes the agreement between the parties as to the process and how it will be conducted, as well as the agreement between the parties and the mediator with respect to the rights and obligations that flow between them in the process. Please read all exhibits carefully, as they are an integral part of the agreement. Absent some extraordinary circumstance, the mediation cannot and will not proceed in the absence of such an agreement, signed by all parties and their attorneys. Exhibit 3 is the Mediation Confidentiality Form to be signed by all parties. Please return these executed documents to me prior to the beginning of the mediation.

This will also confirm that the mediation fee in this case is $___________. The breakdown of the fee is $___________ per party (all parties represented by the same law firm are one party...
for purposes of the mediation fee). After 5:00 p.m., the mediation fee will be $___ per hour. Please make your firm or cashier's check payable to __________________________ Incorporated and have your party's portion of the standard fee delivered to me three business days prior to the mediation.

You are asked to observe the enclosed Family Law Rules of Mediation and not serve pleadings or any other type of document on the opposing counsel at the mediation.
Again, I thank you for your cooperation and for this engagement. I will do everything possible to facilitate the settlement of this case on terms acceptable to all concerned.

Very truly yours,

___________________

Enclosures
PERSONAL AND CONFIDENTIAL

Dear __________:

As we have discussed, mediation of your case is set for (day of the week), (date), at (time), with (name of mediator). The location is (address), and the telephone number there is (telephone number). A fax machine is available (fax number), but please remember to consult with me during the day before having any information faxed to you at the mediation. If you need directions to the mediation, my staff will assist you. I will meet you there at (time).

In preparation for the mediation on __________, I wanted to let you know that these sessions occasionally last into the early evening. Often no real movement is seen until late in the afternoon. While I have, in the past, been in mediation until midnight, I do not think that this is an effective way of resolving such important issues. Unless both parties, and the mediator, agree that the session will continue, I expect to conclude the matter by (time).

One way to see that the time is well spent is to be prepared. To that end, my staff and I will be preparing a confidential mediation statement for the mediator's eyes only. (If there are certain restrictions or conditions you want to request be placed upon ________'s periods of possession, please let me know as soon as possible). (If there are any terms and conditions which you hope to see incorporated into your divorce decree and which we have not previously discussed, please let me know immediately).

The mediation will begin with a meeting of both you and your spouse and the attorneys. You may be asked if you wish to make an opening statement. If that occurs, my suggestion is that you keep your comments brief and focused on your goal of reaching an agreement that is a fair division of the community estate considering your respective earning potentials, that you would like to see provisions for your child(ren) that are in his/her/their best interest and that you would like the agreement to provide for your needs for security for the next few years until your earning capacity is re-established. It is probably best to stay away from reflections over the causes in the breakup of the marriage, as that usually sets back settlement talk for several hours. You will have the opportunity to discuss sensitive matters in the presence of the mediator and in confidence. You may want to begin preparing an idea of issues you wish to address, and you and I will discuss this more fully at a meeting before the mediation.
When the mediator decides the time is right, we will be separated into two rooms and the mediator will spend time with you and me and then with __________ and ____________, going back and forth with offers and counter-proposals throughout the duration of the day. Lunch will be brought in if we work past noon.

The mediator is there to facilitate agreement, not to force one. A mediator cannot make either you or __________ agree to something to which you have objection. Sometimes, the mediator will spend what appears to be an inordinate amount of time with the other party. Often it will appear that nothing is going to be resolved. However, because the mediator can see and hear both parties, we will rely on the mediator to determine whether continued negotiation is worthwhile. If we discuss issues or facts in the presence of the mediator, but do not want them repeated to __________ and his/her attorney, we may say so. The mediation itself is confidential and the mediator may not discuss the mediation with the Judge or anyone else.

The mediator will assume that you are there in good faith and that you are prepared to make decisions. If you are going to need to discuss the settlement with anyone who will not be present, please make sure he or she will be available by telephone during the day. If you intend to bring anyone else with you to the mediation, please let me know immediately. Occasionally a financial advisor is helpful; family members who have not participated in the process of separation and prior negotiations are sometimes counter productive.

If you and __________ reach an agreement, the mediator will reduce it to writing and you and __________ will sign it in the presence of your attorneys. This will become a binding agreement that either of you could enforce against the other as a contract. Sometimes the parties agree to go directly to the courtroom from the mediation and a divorce is granted that day. In other cases, the parties agree at mediation to a date for entry of the decree and granting of the divorce. In that event, __________, or I will draft a divorce decree which incorporates the terms and conditions of the mediated settlement agreement. When you and ______ have read, approved and signed the decree, you and I will go to Court early one morning (no advance notice for a hearing is needed for agreed decrees) and the process of having the divorce "proved up" and granted takes about five minutes.

This is often an emotional and tiring process. Please try to take a walk or bike ride the day before and to get a good night's sleep the evening preceding mediation. Although you may not want it, eat a light breakfast the morning of the mediation.

I know that you will have many questions about mediation. Enclosed are the Rules and forms which the mediator requires. Please complete them as soon as possible and return them to me. As you are doing this, I suggest that you write down the questions which come to mind, so that we can discuss them when we meet in preparation for mediation.
We will work together to prepare for this process. I want you to feel as relaxed as possible under what I know are difficult circumstances.

Very truly yours,

Attorney

Enclosures
AGREED ORDER ON MOTION FOR REFERRAL TO MEDIATION

The Court finds that this case is appropriate for mediation pursuant to Tex. Civ. Prac. and Rem. Code § 154.001 et seq. IT IS ORDERED that ____________________, ____________________, Suite ____, ____________________ is hereby appointed to mediate this case on the 24th day of February, 1999, and all counsel are directed to contact Mediator to arrange the logistics of mediation within three (3) business days of this Order, and such mediation shall occur within thirty (30) days of this Order.

IT IS ORDERED that all fees for the mediation are to be divided and borne equally by the parties unless agreed otherwise, shall be paid by the parties directly to the mediator prior to the beginning of the mediation, and shall be taxed as costs. IT IS ORDERED that each party and counsel shall be bound by the rules for mediation established by the Mediator. IT IS ORDERED that named parties and their attorney(s) of record, if any, shall be present during the mediation process.

SIGNED on ____________________________, 1999.

________________________________________
JUDGE PRESIDING
AGREEMENT CONCERNING REFERRAL OF CASE TO MEDIATION

Petitioner, WILLIFORD WIFE, and Respondent, HAROLD HUSBAND, agree as follows:

1. Petitioner and Respondent agree to participate in good faith in a mediation proceeding for the purpose of determining if the claims among them in the litigation of this case can be settled. This means that all parties shall be willing to be open minded and willing to compromise to some extent their announced positions.

2. The mediation proceeding shall be treated as an alternative dispute resolution procedure under Chapter 154 of the Texas Civil Practice and Remedies Code. See Rules for Mediation, attached hereto as Exhibit 1.

3. ________________, who is an impartial third party, shall serve as the mediator.

4. The mediation proceeding shall commence at 9:00 a.m. on the 24th day of February, 1999, at the law offices of ________________, ________________, Suite ____, ________________ and shall continue until completed, which could extend through the entire day.

5. Petitioner and Respondent shall each have a representative in attendance at the mediation proceeding who shall have full authority to settle the claim among the parties in litigation in this case. Additionally, all of the parties and their attorneys must be present in person.

6. ________________ shall encourage and assist the parties in reaching a settlement but may not compel any party to enter into a settlement agreement.

7. All communications made during the mediation proceeding shall be deemed to be settlement communication within the meaning of Rule 408 of the Texas Rules of Evidence.
8. The mediation fee is $_____.00 per full day. After 5:00 p.m., the fee will be $___ per hour. $_____.00 shall be paid at least three days in advance by each party: $_____.00 by Petitioner and $_____.00 by Respondent. Prior notice of the cancellation of this mediation must be given 48 hours in advance of the mediation date to effect a refund of the mediation fee unless such delay is occasioned by Court imposed matters or further order of this court. See Memorandum Re. Mediation Fees, attached hereto as Exhibit 2.

9. The parties agree that no briefs will be submitted to the mediator, but each party may submit a letter up to two (2) pages in length, which letter shall highlight each party's case. However, the parties and mediator may, if they so desire, refer to pleadings filed and discovery taken in the case. A copy of the live pleadings shall be furnished to the mediator at least three (3) days prior to the scheduled mediation date.

10. The parties agree to mediate under the terms of the Mediation Confidentiality Form, attached hereto as Exhibit 3.

Respectfully submitted,
Mediation Confidentiality Form

Mediation is a settlement procedure which should remain confidential and privileged. Nevertheless:

Evidence that would be discoverable and useful at trial had the contemplated mediation proceeding not been held, does not lose its character as discoverable or admissible at trial merely because it is used in mediation.

Of course, the settlement agreement we hope to reach by mediation will be enforceable, and to that extent is not secret.

In some circumstances, the law requires certain disclosures, like a disclosure in a criminal proceeding of drug or child abuse or of a planned future crime, whether or not it was first disclosed in a mediation.

But we will get more open communication in the mediation, which seems to help the process if we each:

1. agree to treat the mediation and the statements made therein as confidential;

2. agree that all statements made in the mediation shall be privileged against use at any trial relating to this dispute, even in crossexamination;

3. agree that notes either you or the mediator take must be destroyed at the conclusion of the mediation, except for the note of the final agreement, if any; and

4. agree that the mediator will not be called as a witness or be otherwise involved in any ongoing litigation, should settlement fail.

If all of the above is agreeable, please execute all copies of this statement of agreement, so each of the parties and the mediator can preserve a copy in their files.
1. Definition of Mediation. Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

1. Agreement of Parties. Whenever the parties have agreed to mediation, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement to mediate.

1. Consent to Mediator. The parties consent to the appointment of the individual named as mediator in their case. The mediator shall act as an advocate for resolution and shall use his best efforts to assist the parties in reaching a mutually acceptable settlement.

1. Conditions Precedent to Serving as Mediator. The mediator will only serve in cases in which the parties are represented by attorneys. The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. In the event that the parties disagree as to whether the mediator shall serve, the mediator shall not serve.

1. Authority of Mediator. The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement. If necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree in advance and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall decide.

1. Commitment to Participate in Good Faith. While no one is asked to commit to settle their case in advance of mediation, all parties commit to participate in the proceedings in good faith with the intention to settle, if at all possible.

1. Parties Responsible for Negotiating Their Own Settlement. The parties understand that the mediator will not and cannot impose a settlement of their case and agree that they are responsible for negotiating a settlement acceptable to them. The mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The mediator does not warrant or represent that settlement will result from the mediation process.

1. Authority of Representatives. PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT. The names and addresses of such persons shall be
communicated in writing to all parties and to the mediator.

1. Time and Place of Mediation. The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the mediator, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.
2. Privacy. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the consent of the mediator.

1. Confidentiality. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this agreement shall pay all fees and expenses of the mediator and other parties, including reasonable attorney's fees, incurred in opposing the efforts to compel testimony or records from the mediator.

1. No Stenographic Record. There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

1. No Service of Process At or Near the Site of the Mediation Session. No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

1. Termination of Mediation. The mediation shall be terminated: a) by the execution of a settlement agreement by the parties; or b) by declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile.

1. Exclusion of Liability. The mediator is not a necessary or proper party in judicial proceedings relating to the mediation. Neither mediator nor any law firm employing mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

1. Interpretation and Application of Rules. The mediator shall interpret and apply these rules.

1. Fees and Expenses. Absent express agreement to the contrary, or unless the parties agree otherwise, the mediator's fee shall be borne equally by the parties.
MEMORANDUM RE: MEDIATION FEES
FAMILY LAW RELATED CAUCUS METHOD
MEDIATION ON THE MERITS

In order to understand the fee structure a brief explanation of methodology is often helpful.

The mediation process I am focusing on works best when:

a. Suit has been filed.

b. The parties are all represented by attorneys. (Pro se parties are acceptable under some circumstances, but those occasions are rare, particularly in a family law case.)

c. Information has been exchanged sufficient to allow all parties and their attorneys to answer the following question in the negative:

"Is there any bit of information anyone lacks that would prevent you from being able to make a decision about a full and complete settlement on all issues in dispute in this mediation today?"[1]

d. All parties and their attorneys are committed to be present during the entire mediation process, without interruption, until the matter is resolved or the mediator declares that the mediation has failed.[2]

e. All persons whose authority may be required for a full and complete settlement of all issues subject to mediation are available.

All parties and their attorneys meet with the mediator in open or general session where the rules of the proceeding are established, the mediator acquaints himself with the parties and their attorneys, and each side is given the opportunity to present their view of the controversy and their respective positions on all the issues in the case.

Upon completion of the general session, the parties are aligned and separated by the mediator into private caucuses where they usually remain throughout the process, with the mediator moving from group to group as deemed appropriate. General sessions are rarely reconvened unless and until it is time to reduce the parties' agreement to writing for the signature of all concerned.

The average case should reach settlement or stalemate in one continuous session, which may span from eight to twelve hours. If the matter has not been resolved within ten hours, I reserve the right to call a halt to the proceedings and inform the parties as to whether or not in my
opinion we are approaching impasse. At that point, and assuming I have not declared an impasse, proceed with the mediation on an hourly basis, or continue the mediation at another time and for an additional set fee to be agreed upon before we adjourn. In some cases, a Mediator's proposal will be confidentially submitted to both parties on a "Yes" or "No" basis following a terminated session, with the understanding that no party's response will be revealed by the mediator unless all parties respond in the affirmative.

Provided we begin in the morning, lunch and refreshments are furnished by the mediator, served and work is continuous once the private caucuses begin. Frequently, however, we work through the dinner hour and the parties are free to order dinner (but at their own expense).

Fees for such mediation, where there are two primary adversaries, will generally be $_______.00 per party, or a total of $_______.00 for the first session of up to eight hours. Where there are multiple adverse parties, the total fee is generally higher for the session, divided by the parties either equally or in such other proportions as they may agree. (The increase in fee reflects the likelihood that the balancing of the interests of additional parties increases the complexity of the process and the time required to resolve it).

The "Half Day" Mediation

Frequently the parties or their attorneys will request a "half day" mediation, in anticipation that the issues in dispute are so limited that we should be able to settle them in a short time, or determine we are at an impasse. While placing such time limits on the process is frequently counter productive, and can interfere with the mediator's efforts to achieve settlement, it is sometimes dictated by the financial realities or is appropriate for other reasons. Consequently, when a "half day" mediation is requested, the fee is reduced to $_____.00 per party (a total of $_______.00) and if the matter has not been resolved within four hours, I reserve the right to call a halt to the proceedings and inform the parties as to whether or not in my opinion we are at an impasse. At that point, and assuming I have not declared an impasse, the parties will be given the option to terminate the mediation, proceed with the mediation on an hourly basis, or continue the mediation at another time, and for an additional set fee to be agreed upon before we adjourn.

All initial fees are payable in advance of the mediation session.
The "Out of Town" Mediation

If the mediator has to travel, several other issues arise. The first is the location for the mediation session. If one of the attorneys is able to provide adequate facilities, there is no problem. If that is not possible, appropriate space needs to be identified and rented. A pair of hotel or motel rooms generally works well and doubles in part as overnight accommodations for the mediator.

Actual out-of-pocket travel expenses for automobile mileage, coach airfare, ground transportation, middle-class overnight lodging and reasonable meals are charged to the parties in the same proportions as the mediation fees. Sometimes two nights lodging may be necessary since mediation sessions can last long into the night, and return airplane reservations must frequently be canceled. There is no charge for travel time to or from the city where the mediation takes place, so long as it is accessible by commercial airline.

When the mediator opens a file and studies material provided in preparation for a mediation session that does not occur due to the refusal on one party to go forward or cancellation of the mediation by agreement of the parties or court order, an administrative fee will be charged upon closing of the file by the mediator. This fee is to be borne equally by the parties, subject to ultimate assessment by order of the court as between them. Please remember that your mediator is, like you, a busy lawyer with appointments, depositions, court appearances and trials to contend with. Setting aside a full day of uninterrupted time to devote to your case is no small commitment on the mediator's part. As a consequence, put yourself in the mediator's shoes before you ask for "tentative reservations", or cancel and/or reschedule a mediation solely for the convenience of one of the parties or attorneys. And explain to your client why a cancellation fee is only appropriate.

The "Complex Case"

Where a case is truly unusual, whether due to the complexity of the legal or factual issues involved, the number of parties, the length required for full presentation of the parties' positions in general session, or for any other reason, it might not be realistic to try to complete the process in one session. A second day fee may be arranged in advance under those circumstances.

Sometimes the best procedure is to break after the general session and then resume afresh at the beginning of private caucuses with the commitment to remain in continuous session until resolution is achieved or a stalemate is declared by the mediator. In that situation, fees will be charged on an hourly basis for the general session, at a total rate of $____.00 per hour, apportioned among the parties. Where the mediator has advance notice that the mediation will span 2 days, there is no charge for the balance of the business hours of the first day, as he/she is free to attend to other work whether away from his/her office or not. The continuous session in private caucuses will be on the flat fee basis outlined above.

There are, of course, cases of such magnitude or complexity that special fee arrangements are negotiated, but this is not common.
MEMORANDUM RE: MEDIATION FEES
COURT REQUIRED MEDIATION PRIOR TO TEMPORARY HEARING

The local rules in Harris County provide for referral of most cases involving temporary custody and possession issues to mediation prior to a temporary hearing. These are referred to the Harris County Domestic Relations Office, or the Dispute Resolution Center, or the parties may select a private mediator. These mediations are usually conducted "conference" style, with or without the participation of the lawyers, as they see fit. They are generally limited in duration to a maximum of three hours. At present the "DRO" and "DRC" mediations are without cost, assuming these parties meet the income guidelines set by these agencies. People whose resources exceed the guidelines will be expected to employ the services of a private mediator, although it is unclear to me how active the screening process has been to this point in time. In any event, we are prepared to provided this service for a fee of $____.00 per hour.

Fees for mediation of temporary matters other than in implementation of the above mentioned local rules of Harris County will be set in accordance with the above memorandum describing caucus method mediation on the merits.
### Appendix H Sample Mediation Spreadsheet

<table>
<thead>
<tr>
<th>Item</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband</td>
<td>400,000</td>
</tr>
<tr>
<td>Wife</td>
<td>400,000</td>
</tr>
<tr>
<td>Residence</td>
<td>400,000</td>
</tr>
<tr>
<td>Family Business</td>
<td>355,000</td>
</tr>
<tr>
<td>Family Business</td>
<td>355,000</td>
</tr>
<tr>
<td>Mercedes</td>
<td>24,000</td>
</tr>
<tr>
<td>Mercedes</td>
<td>24,000</td>
</tr>
<tr>
<td>BMW</td>
<td>19,000</td>
</tr>
<tr>
<td>BMW</td>
<td>19,000</td>
</tr>
<tr>
<td>Husband's IRA</td>
<td>22,000</td>
</tr>
<tr>
<td>Husband's IRA</td>
<td>22,000</td>
</tr>
<tr>
<td>Wife's IRA</td>
<td>22,000</td>
</tr>
<tr>
<td>Wife's IRA</td>
<td>22,000</td>
</tr>
<tr>
<td>Defined Benefit Plan</td>
<td>126,000</td>
</tr>
<tr>
<td>Defined Benefit Plan</td>
<td>126,000</td>
</tr>
<tr>
<td>401(k) Plan</td>
<td>244,000</td>
</tr>
<tr>
<td>401(k) Plan</td>
<td>122,000</td>
</tr>
<tr>
<td>401(k) Plan</td>
<td>122,000</td>
</tr>
<tr>
<td>Merrill Lynch</td>
<td>100,000</td>
</tr>
<tr>
<td>Merrill Lynch</td>
<td>100,000</td>
</tr>
<tr>
<td>Smith Barney</td>
<td>200,000</td>
</tr>
<tr>
<td>Smith Barney</td>
<td>200,000</td>
</tr>
<tr>
<td>Savings Account</td>
<td>125,000</td>
</tr>
<tr>
<td>Savings Account</td>
<td>125,000</td>
</tr>
<tr>
<td>Life Insurance CSV</td>
<td>20,000</td>
</tr>
</tbody>
</table>
20,000
Alimony NPV
(222,000)
222,000
Credit Cards
(14,000)
(14,000)
Totals
1,643,000
802,000
841,000
The undersigned parties herewith agree to compromise and settle the claims and controversies between them in this suit. The parties wish to avoid potentially protracted and costly litigation, and agree and stipulate that they have carefully considered all matters deemed important to each of them. The parties stipulate that the agreements set forth hereafter constitute a fair and just division of all community property and liabilities, and agree that such issues are resolved. In order to reach this settlement, the parties intentionally refrained from characterizing any property as separate or community, all reimbursement claims were considered directly or indirectly, and the property division has taken into consideration all claims that one could or should have made, including all pending motions. The parties generally release each other from any claims that either may hold against the other.

THIS AGREEMENT IS NOT SUBJECT TO REVOCATION.

A PARTY TO THIS AGREEMENT IS ENTITLED TO JUDGMENT ON THIS MEDIATED SETTLEMENT AGREEMENT.

STIPULATIONS
1. Assets to Harry H. Husband are set out on Schedule A.
2. Assets to Williford W. Wife are set out on Schedule B.
3. Liabilities to Harry H. Husband are set out on Schedule C.
4. Liabilities to Williford W. Wife are set out on Schedule D.
5. Other terms of settlement are set out on Schedule E.
6. The parties shall submit all drafting disputes, omitted terms, property or provisions and/or performance issues to ______________ as an arbitrator, whose decision shall be binding on the parties, including decisions on the payment for fees and arbitration costs. ______________ shall charge his/her time for the arbitration at the rate of $___ .00 per hour. Prior to arbitration of any matters, the parties shall each escrow one-half of an amount requested by ________________.
7. reasonably anticipated by him to cover his hourly charges for such arbitration; but in any event, no less than $____ .00 each, or a total of $____ .00 for both parties.
8. This agreement is performable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

9. Each signatory to this settlement has entered into same freely and without duress after having consulted with professionals of his or her choice. Each party hereto has been advised by the Mediator that the Mediator is not the attorney for any party, hereby releases the mediator from any possible causes of action, and that each party should have this agreement approved by that party's attorney prior to executing same.
10. The provisions of this Agreement shall be effective immediately as a contract, shall supersede any temporary orders or other agreements of the parties with respect to the subject matter hereof, and shall serve as a partition of all property set forth herein to the person to whom such property is awarded. All income from any property herein awarded is partitioned to the person to whom the property is awarded. All earnings from each party is partitioned to the person providing the services giving rise to the earnings.

11. This stipulation is signed voluntarily and with the advice and consent of counsel on the date set out below, and its provisions are intended to be incorporated into an Agreed Decree of Divorce.

12. AGREED:

________________________________
Harry H. Husband

________________________________
Williford W. Wife

APPROVED:

________________________________
Attorney for Harry H. Husband

________________________________
Attorney for Williford W. Wife

THIS STIPULATION IS APPROVED AND ACCEPTED BY THE COURT THIS _____ DAY OF ____________________, 1999.

________________________________
JUDGE PRESIDING
Property Awarded to Harry H. Husband. Harry H. Husband is awarded the following as Harry H. Husband's sole and separate property, and Williford W. Wife is divested of all right, title and interest in and to such property:

i. All household furniture, furnishings, fixtures, goods, appliances, and equipment in the possession of or subject to the sole control of Harry H. Husband.

ii.

iii. All clothing, jewelry, and other personal effects in the possession of or subject to the sole control of Harry H. Husband.

iv.

v. Real property located at ________________________________.

vi.

vii. NationsBank account no. ____________________________

viii.

ix. 1994 Pontiac Bonneville, VIN # ________________________

x.

xi.

xii.
SCHEDULE "B"

Property Awarded to Williford W. Wife. Williford W. Wife is awarded the following as Williford W. Wife's sole and separate property, and Harry H. Husband is divested of all right, title and interest in and to such property:

i. All household furniture, furnishings, fixtures, goods, appliances, and equipment in the possession of or subject to the sole control of Williford W. Wife.
ii. All clothing, jewelry, and other personal effects in the possession of or subject to the sole control of Williford W. Wife.
iii.
iv. Community Bank Money Market Account no. ________________
v.
vi. Northern Trust Bank Account no. ________________
vii.
viii.
ix.
Liabilities Awarded to Harry H. Husband. Harry H. Husband agrees to pay, as part of the division of the estate of the parties, the following debts and obligations and shall indemnify and hold Williford W. Wife harmless from any failure to so discharge such debts and obligations:

i. Unpaid & presently due & owing attorney's fees & litigation expenses incurred by Harry H. Husband.

ii. All debts, encumbrances and taxes due on the property awarded to Harry H. Husband.

iii. All debts incurred solely by Harry H. Husband not mentioned elsewhere herein.

iv. Federal Income Tax Liability for all years of the marriage.
Liabilities Awarded to Williford W. Wife. Williford W. Wife agrees to pay, as part of the
division of the estate of the parties, the following debts and obligations and shall indemnify and
hold Harry H. Husband harmless from any failure to so discharge such debts and obligations:
i. Unpaid & presently due & owing attorney's fees & litigation expenses incurred by
Williford W. Wife.
ii. All debts, encumbrances and taxes due on the property awarded to Williford W. Wife.
iii.
S C H E D U L E "E"

Other Terms of Settlement. The other terms of settlement are as follows:

Harry H. Husband shall pay to Williford W. Wife statutory maintenance of $1,850 per month for 12 months, then $1,950 per month for the next 12 months, then $2,050 per month for the next 12 months, then $2,150 per month for the next 24 months, and then $1,650 indefinitely until terminated or modified under applicable maintenance laws. The maintenance shall begin on June 1, 1999, and shall not be modified for the first 60 months (except by death of either party, or the remarriage or cohabitation of Williford W. Wife as provided by the maintenance statutes).
IN THE MATTER OF
§
IN THE DISTRICT COURT
THE MARRIAGE OF
§
§
HARRY H. HUSBAND
§
AND
§
99TH JUDICIAL DISTRICT
WILLIFORD W. WIFE
§
§
AND IN THE INTEREST OF
§
BILLY BOB BOY, A CHILD
§
HARRIS COUNTY, TEXAS

MEDIATED SETTLEMENT AGREEMENT

1. Parties
   The parties to this agreement are Williford W. Wife, who is called "Wife" and "Mother", and Harry H. Husband, who is called "Husband" and "Father".

2. Scope of Agreement
   The parties agree to settle all claims and controversies between them, asserted or assertable, in this case except ____________________.

3. Real Estate
   1. Wife will own the property listed below and will pay the remaining balance of the mortgage:
      ____________________

   2. Husband will own the property listed below and will pay the remaining balance of the mortgage:
      ____________________

   3. The property commonly known as ____________________, ____________________, ____________________ County, Texas, will be listed for sale with a real estate agent who is active in the area where the property is located. It will be sold for a price and on terms that are mutually agreeable to the parties. Until the closing of the sale:
a. Wife will have the exclusive use and possession of the property and will pay all utilities and keep the property maintained and in good repair.
b. Wife will pay the mortgage payments as they come due.
c. Wife will pay the insurance premiums and ad valorem taxes as they come due.

On the sale, the net sales proceeds will be divided fifty percent to Wife and fifty percent to Husband. If, after ________________ days after the divorce, the parties are unable to agree on a sales price or terms, then either party may apply to the Court for the appointment of a receiver to take possession of the property and sell it and, after the receiver's fee, to distribute the remaining proceeds in the proportions specified above.

4. Personal Property
   1. Wife will own the property listed in Schedule A.
   2. Husband will own the property listed in Schedule B.

5. Motor Vehicles
   1. Wife will own the following motor vehicles and will pay the remaining balance of any lien debt on each:

   2. Husband will own the following motor vehicles and will pay the remaining balance of any lien debt on it.

6. Money
   1. Wife will receive the following bank accounts: ________________.
   2. Husband will receive the following bank accounts: ________________.

7. Life Insurance
   1. Wife will receive all policies of insurance on her life.
   2. Husband will receive all policies of insurance on his life.

8. Retirement
   Wife's retirement benefits at ________________ that have accrued through the date of divorce will be divided ________________ percent to Wife and ________________ percent to Husband. A QDRO will be submitted to the Court for entry that contains the following particulars regarding the division of benefits: ________________.
Husband's retirement benefits at ____________________ that have accrued through the date of divorce will be divided ____________________ percent to Wife and ____________________ percent to Husband. A QDRO will be submitted to the Court for entry that contains the following particulars regarding the division of benefits:

____________________

9  Spousal Maintenance
Husband will pay tax-deductible spousal maintenance to Wife of $____________________ per month for ____________________ months, beginning on ____________________, but if Wife dies before all payments are made, the maintenance will terminate at the death of Wife.

10. Liabilities
1. Wife will pay the liabilities listed in Schedule C.
2. Husband will pay the liabilities listed in Schedule D.

11. Managing Conservatorship of Children
Joint

12. Rights and Duties
Parental rights and duties will be allocated between Mother and Father according to Schedule E.

13. Possession
Mother shall have possession of the children at all times other than that awarded to Father, which shall be according to Standard Possession Order.

14. Child Support
1. Father will pay child support to Mother of $____________________ per month, with the first installment being due on ____________________ and a like payment being due on the ____________________ day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:
   a. any child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child-support payments shall continue to be due and paid until the end of the month in which the child graduates;
   b. any child marries;
   c. any child dies;
   d. any child's disabilities are otherwise removed for general purposes; or
   e. further order modifying this child support.
2. Father will carry health insurance on the children.
3. Deductibles, copayments, and uninsured medical expenses will be paid ____________________ percent by Mother and fifty percent by Father.

15. Release
Each party releases the other from all claims, demands, and causes of action each may have against the other, save and except those covenants, duties, and obligations set forth in this agreement.

16. Full Disclosure
Each party represents that he or she has made a fair and reasonable disclosure to the other of the property and financial obligations known to him or her.

17. Final Documents
   1. The terms of this agreement will be incorporated in a decree and agreement incident to divorce that will follow the forms published in the Texas Family Law Practice Manual (2d ed.). The attorney for Wife will prepare the documents.
   2. Other closing documents will be prepared by the attorney for the party who will benefit thereby, with such documents to follow the forms published in the Texas Family Law Practice Manual (2d ed.).

18. Disputes Regarding This Agreement
   If any dispute arises with regard to the interpretation or performance of this agreement or any of its provisions, including the necessity and form of closing documents, the parties agree to try to resolve the dispute by phone conference with the mediator who facilitated this settlement. Any disputes regarding drafting shall be resolved whenever possible by reference to the Texas Family Law Practice Manual (2d ed.).

19. Place of Performance
   This agreement is made and is performable in Harris County, Texas, and must be construed in accordance with Texas law.

20. Court Appearance
   The parties agree to appear in court at the first available date to present evidence and secure rendition of judgment in accordance with this agreement.

21. THIS AGREEMENT IS NOT SUBJECT TO REVOCATION.

Harry H. Husband
Signed on:

Attorney for Harry H. Husband
Signed on:

Williford W. Wife
Signed on:

Attorney for Williford W. Wife
Signed on:
ALLOCATION OF PARENTAL RIGHTS AND DUTIES

RIGHTS AND DUTIES
EACH HAS AT ALL TIMES
EACH HAS DURING POSSESSION
SOLELY MOTHER
SOLELY FATHER
JOINT

Right to receive information from the other parent concerning the health, education, and welfare of the child
Right to confer with the other parent, to the extent possible, before making a decision concerning the health, education, and welfare of the child
Right of access to medical, dental, psychological, and educational records of the child
Right to consult with a physician, dentist, or psychologist of the child
Right to consult with school officials concerning the child's welfare and educational status, including school activities
Right to attend school activities
Right to be designated on the child's records as a person to be notified in case of an emergency
Right to consent to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child
Right to manage the child's estate to the extent the estate has been created by the parent or the parent's family
Duty of care, control, protection, and reasonable discipline of the child
Duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure
Right to consent for the child to medical and dental care not involving an invasive procedure
Right to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child
Right to direct the moral and religious training of the child
Duty to make periodic child-support payments
Right to establish the primary residence of the child
Right to consent to medical, dental, and surgical treatment involving invasive procedures and to psychiatric and psychological treatment
Right to receive and give receipt for periodic payments for the support of the child and hold or disburse the funds for the benefit of the child
Right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child
Right to consent to marriage and enlistment in armed services of U.S.
Right to make decisions concerning the child's education
Right to services and earnings of the child
Except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the U.S., or a foreign government

Duty to manage the child's estate to the extent the estate has been created by community property or the joint property of the parents

[1] It is extremely important to the success of the mediation that documents and proposals not only be exchanged, but also read and digested before the mediation begins. Otherwise valuable time is consumed in preparing for mediation after mediation has begun. This can result in a failed mediation or the expense of a second session solely because of lack of advance preparation by the attorneys, or as often, the result of a lack of cooperation by the client.

[2] It is usually essential for the attorneys to be present at all times, yet the nature of the process is such that much of the attorney's time seems wasted when the mediator is closeted with one of the other parties for extended periods of time. One helpful way to address this problem is for the attorney and client to have a clear understanding that the attorney should be encouraged to bring additional work to the mediation where possible so as to be able to bill some of his time to other clients when not actively engaged in the mediation process.