

KINSEY LAW OFFICES

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Instructions: Complete this Agreement and either scan and e-mail to kinseye@ix.netcom.com or fax to (562 596-0298). The Agreement is effective when signed by Attorneys and Client's payment has been received.

AGREEMENT FOR MEDIATION SERVICES

(Hourly Fee)

_____ [Husband's Name] and _____ [Wife's Name], hereinafter collectively referred to as "CLIENT," agree jointly and severally to pay KINSEY LAW OFFICES, hereinafter referred to as "ATTORNEYS" or "MEDIATOR" the sums specified below for mediation of the issues described below, hereinafter referred to as "the Case".

1. Client Information:

Husband	Wife
Name: _____	Name: _____
Address: _____ _____ _____	Address: _____ _____ _____
Zip: _____	Zip: _____
Phones: Bus: (____) _____ Cell: (____) _____ Hm: (____) _____ Fax: (____) _____	Phones: Bus: (____) _____ Cell: (____) _____ Hm: (____) _____ Fax: (____) _____
E-Mail: _____	E-Mail: _____

2. ISSUES FOR MEDIATION: The issues in the case to be mediated by the terms of this agreement are as follows: [Check All Issues For Mediation]

- _____ Child Visitation
- _____ Child Support
- _____ Property/Debt Characterization
- _____ Community Property Division
- _____ Other (Describe): _____
- _____ Community Debt Division
- _____ Separate Property Confirmation
- _____ Attorney Fees & Costs

3. OBJECTIVES OF MEDIATION: The objective of the mediation shall be to

- a. Reach agreement on all of the issues above-described,
- b. Reduce the agreement to writing in a Marital Settlement Agreement (hereinafter "MSA")
- c. Other [Describe]: _____

4. SCOPE OF MEDIATOR'S SERVICES: The scope of the mediator's services shall be limited to the issues and objectives of mediation described above. **The Mediator shall have no power to impose a settlement agreement on the parties.** Once familiar with the Case, the Mediator will, if requested by the parties, give an opinion on the probable outcome of the Case and the range of value, both in terms of settlement and trial if the matter were to be litigated. The Mediator may, without an instruction from the parties to the contrary, give recommendations on terms of possible settlement conditions to be imposed upon the parties (if appropriate). The Mediator's opinion shall be based on the material and information then available to all parties, provided that the Mediator shall not reveal information communicated during a separate caucus that a party has requested not be disclosed to the opposing side. **The opinions and recommendations of the Mediator are not binding on the parties.**

THE MEDIATOR IS A NEUTRAL, SHALL REPRESENT BOTH PARTIES JOINTLY IN AN ATTEMPT TO SETTLE THE ABOVE-DESCRIBED ISSUES, REPRESENTS NEITHER OF THE PARTIES INDIVIDUALLY, AND SHALL NOT REPRESENT EITHER PARTY IN ANY COURT ACTION OR PROCEEDING WITHOUT THE EXPRESS WRITTEN CONSENT OF BOTH PARTIES.

THE MEDIATOR SHALL NOT COMMENCE OR PROSECUTE ANY LITIGATION INVOLVING EITHER OF THE PARTIES WITHOUT THE SEPARATE WRITTEN CONSENT OF BOTH PARTIES.

5. CLIENT'S OBLIGATIONS: Clients, and each of them, shall:

- a. Be truthful at all times during the mediation process both with each other and with the Mediator.
- b. Respond timely with all reasonable requests for information from the Mediator.
- c. Sign all authorizations and consents reasonably necessary to allow the Mediator to obtain documents and information from third parties.
- d. Keep the Mediator informed at as to Clients' residence addresses, telephone number(s), and places of employment.
- e. **Disclosure: Provide to the other party and to the Mediator all documents and information which Mediator deems necessary to complete the financial disclosures of both parties required by California law to be completed before the execution of any Marital Settlement Agreement including, but not limited to a 1) Declaration of Disclosure, 2) Income & Expense Declaration, 3) Property Declaration, and 4) Declaration Of Material Facts.**

6. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST – CONSENT TO JOINT REPRESENTATION: Clients desire that Attorneys jointly represent both clients. Joint representation may create certain conflicts of interest, in that the interests and objectives of each client individually on certain issues related to the Case are, or may become, inconsistent with the interests and objectives of the other. Attorneys' representation of multiple interests has significant implications which both parties should consider. For example, rather than vigorously asserting a single client's interest on an issue, there likely will be a balancing of interests between the parties. Terms that are advantageous to one party are typically disadvantageous to the other party. Further, in the event of a dispute between the parties, Attorneys may be precluded from representing either party without first obtaining the informed written consent of all concerned.

Rule 3-310 of the California Rules of Professional Conduct provides that Attorneys may not jointly represent clients with actual or potential conflicts of interests unless they first waive such conflicts in writing. Clients acknowledge that they have been advised of the Rule and of the potential conflicts associated with their respective interests and that they nevertheless desire Attorneys to jointly represent them in connection with the matters described above.

Each party remains completely free to seek other counsel at any time even if he/she signs the consent set forth below. Should either party have any questions concerning this disclosure or the consent below they are urged to discuss them with their own counsel before signing the consent and waiver.

WAIVER OF CONFLICTS OF INTEREST AND CONSENT TO JOINT REPRESENTATION: Each party understands that there exist potential conflicting interests in the above-described matter and Attorneys have informed both parties of the possible consequences of these conflicts. Both parties also understand that they have the right to and have been encouraged to consult independent counsel before signing this consent.

Each of the undersigned nevertheless desires representation by Attorney to the extent described above and, therefore, consents and gives approval to such representation.

Date: _____
Husband: _____

Date: _____
Wife: _____

7. CONFIDENTIALITY OF PROCEEDINGS: The mediation process is to be considered a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. The parties hereto agree that the provisions of Ev.C §§ 703.5 and 1115 et seq. shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other official record shall be made except to memorialize a settlement record. All statements, admissions, writings, promises and offers made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Likewise, all conduct, views and opinions, oral or written, made for the purpose of, in the course of, or pursuant to the mediation or mediation consultant by any person (including any party, party's agent, employee, attorney mediator or other nonparty) are to be considered confidential and privileged. Such conduct, statements, admissions, writings, promises, offers, views and opinions shall not be subject to discovery or be admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise admissible or subject to discovery is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

8. INITIAL RETAINER WAIVED: (\$WAIVED) Client shall pay no retainer fee.

9. NO FLAT FEE: Client agrees to pay to Attorneys an hourly fee – not a flat fee.

10. HOURLY FEE FOR ATTORNEY TIME: (\$300.00 Per Hour) Client promises to pay to Attorneys a fee of \$300.00 per working hour for each and every hour spent by mediator working on the above-described matter including but not limited to phone time, investigation, research, drafting, and travel time. **MINIMUM BILLING:** Said hourly fee shall be billed in increments of no less than .25 hours; i.e. **Client shall be billed for .25 hours for each billable period of .25 hours OR PART THEREOF.**

11. MINIMUM NONREFUNDABLE ADVANCE PAYMENT: Client shall pay to Attorneys the minimum fee indicated below for the first twelve (12) hours of attorney time, exclusive of any and all costs of suit. Client understands that the said Minimum Fee is the least that Client shall pay to Attorneys for the above-described services and that, should Attorneys be required to spend more than twelve (12) hours representing client, the total fee to be incurred by Client will exceed the said Minimum Fee. The minimum fee is **EARNED UPON RECEIPT AND IS NOT REFUNDABLE**. Should Client choose not to use the first twelve (12) hours of attorney time or should client's matter be completed in less than twelve (12) hours, the minimum advance payment for unused hours shall not be refunded to Client and shall be retained by Attorneys.

	MINIMUM FEE	TO BE PAID IN ADVANCE
INITIAL RETAINER	\$-0-	\$-0-
FLAT FEE	\$-0-	\$-0-
HOURLY ATTORNEY FEE	\$3,600	\$3,600
TOTALS:	<u>\$3,600</u>	<u>\$3,600</u>

12. COSTS PAID BY CLIENT: In addition to attorney fees described above Client agrees to pay all costs which are reasonably necessary to perform the above-described service. Such costs shall be advanced on demand by Mediator and shall be the paid ½ by Husband and ½ by Wife.

13. FEES & COSTS TO BE BORNE EQUALLY: The fees and costs of the Mediation shall, in the absence of a written agreement to the contrary, be borne equally by all parties. Should any fees or costs be advanced by a party to the mediation, the other party shall reimburse the advancing party one-half of all such fees or costs.

14. JOINT AND INDIVIDUAL RESPONSIBILITY FOR PAYMENT OF FEES AND COSTS TO MEDIATOR: Client promises to pay Attorneys all sums due in full on or before the **fifth day after billing**. Each party shall be jointly and individually responsible for payment of all fees and costs. Should one party to the mediation fail to pay his or her share of fees and costs, the other party shall be responsible for the payment to the Mediator of the fees of the defaulting party.

15. CREDIT CARD AUTHORIZATION: Client authorizes Attorneys to debit any credit card to which Client is signatory including but not limited to the following a) immediately for any returned check and/or b) for any and all sums due and unpaid on the Thirtieth (30th) day after the due date thereof:

Husband	Wife
Card (Visa, Amex, Etc.): _____	Card (Visa, Amex, Etc.): _____
Holder (Name on Card): _____	Holder (Name on Card): _____
Number: _____	Number: _____
Expiration Date: _____	Expiration Date: _____
Pin (back of card): _____	Pin (back of card): _____
Billing Address: _____	Billing Address: _____
_____	_____
_____	_____

16. LATE SERVICE CHARGE: If any payment or portion thereof due under this Agreement is not received by Attorneys within ten (10) days after the due date thereof, Client agrees to pay Attorneys, in addition to the payment due, a late service charge of five percent (5%) of the amount of such payment due and unpaid.

17. DISCLAIMER OF GUARANTEE: Nothing in this Contract and nothing in Attorneys' statements to Client will be construed as a promise or guarantee about the outcome of Client's matter. Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of Client's matter are expressions of opinion only.

18. ATTORNEY FEES FOR COLLECTION FROM CLIENT: In case suit or action is instituted to collect any sums due under this Agreement, Client agrees to pay such additional sum over and above the amount of Client's indebtedness to Attorneys as the court may adjudge reasonable as Attorney fees incurred in such suit or action.

19. TERMINATION OF ATTORNEYS' SERVICES: Either party, acting alone, may, for any reason, terminate the services of Attorneys by requesting that the mediation process not go forward. Should either party fail to communicate with Mediator for a period of Twenty (20) days, he or she shall be deemed to have requested that the mediation process not go forward. Upon the receipt of such request from either party or both parties, the mediation shall be deemed to have been completed and the Attorneys' services. Should one party terminate Attorneys' mediation services, Attorneys shall be prohibited thereafter from representing the other party in any action or proceeding.

20. ARBITRATION: Any dispute between the parties and the Mediator as to attorney fees and/or costs charged under this Contract shall be resolved as follows: If a fees and/or costs dispute arises, Attorney will provide Client with written notice of Client's right to arbitrate under the California State Bar Act (Bus.&Prof.C. §6200 et seq.). Client and Attorney may thereafter agree that the arbitration will be binding or that the dispute will ultimately be resolved by another form of binding arbitration. Any other dispute arising under this Contract or in connection with the provision of legal services by Attorney, including, without limitation, any claim for breach of contract, professional negligence or breach of fiduciary duty, shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.

21. EFFECTIVE DATE: This agreement will not take effect and Attorneys shall have no obligation to provide legal services until Client both 1) returns to Attorneys a signed copy of this agreement and, 2) makes the entire advance payment specified in Paragraph 6 herein.

BY SIGNING THIS CONTRACT IN THE SPACE PROVIDED BELOW, CLIENT ACKNOWLEDGES THAT THIS AGREEMENT TO ARBITRATE RESULTS IN WAIVER OF CLIENT'S RIGHT TO A COURT OR JURY TRIAL FOR ANY FEE DISPUTE OR MALPRACTICE CLAIM. THIS ALSO MEANS THAT CLIENT IS GIVING UP CLIENT'S RIGHT TO DISCOVERY AND APPEAL. IF CLIENT LATER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO DO SO, CLIENT MAY BE REQUIRED TO ARBITRATE PURSUANT TO THE PROVISIONS OF THE LAW. CLIENT ACKNOWLEDGES THAT BEFORE SIGNING THIS CONTRACT AND AGREEING TO BINDING ARBITRATION CLIENT IS ENTITLED, AND HAS BEEN GIVEN A REASONABLE OPPORTUNITY, TO SEEK THE ADVICE OF INDEPENDENT COUNSEL.

EXECUTED at Seal Beach, California.

CLIENTS:

Date: _____
_____ Husband

Date: _____
_____ Wife

ATTORNEYS:

Date: _____
_____ EUGENE E. KINSEY