

Dana L. Cogan, M.D.
4643 South Ulster Street
Suite 1220
Denver, CO 80237
303-221-2602

MEDIATION/ARBITRATION

FEE AGREEMENT

This Agreement is among _____, _____ (the
“Parties”) and Dana L. Cogan, M.D. (“Dr. Cogan”) and is dated as of _____,
2012.

1. We hereby employ Dr. Cogan to help us address and resolve complex parenting issues pertaining to our child(ren) by means of mediation/arbitration (med/arb).
2. We hereby appoint Dr. Cogan to help us resolve the following issues:

3. We understand that med/arb is a process of alternative dispute resolution that begins with assisted negotiations regarding the issue(s) enumerated above and, if we are unable to reach an agreement regarding the issue(s), becomes a process of arbitration in which a binding decision is made by the mediator/arbitrator.
4. Dr. Cogan shall serve as our mediator/arbitrator until such time as we agree to appoint a different mediator/arbitrator, the Court appoints a different mediator/arbitrator, Dr. Cogan resigns, or for a specified period of time determined at the outset of the process.
5. If we agree upon a specified period of time at the outset of the process, the term of Dr. Cogan’s appointment shall be: _____
6. It is our intent to resolve the issue(s) ourselves with the help of Dr. Cogan. The following provisions apply during the mediation phase of the process.

7. We understand that Dr. Cogan is a neutral facilitator who will help us reach our own settlement. He will not make decisions about what is the “right” or “wrong” decision or tell us what to do. At the same time, we understand that Dr. Cogan is expected to:
 - a) Provide a method that we may use to determine what we need to resolve disputes regarding the children and to identify obstacles that we must overcome if we are to resolve those disputes;
 - b) Provide information, when appropriate, regarding child development, the impact of divorce on family members, the nature of conflict, dispute resolution, usual parenting time schedules, decision-making structures, and other issues that apply to our situation;
 - c) Facilitate an agreement regarding the Parenting Plan that is in our children’s best interest by giving us plan components to consider and by providing suggestions for reasonable compromises when we disagree.
8. We understand that Dr. Cogan will, in his discretion, assess the most profitable format and methods to mediate disputes regarding the parenting plan that is in the best interest of our child(ren) and will, in that regard, determine whether to meet with us together or individually. Dr. Cogan will use his discretion when deciding to include our child(ren) in the mediation process. If he decides to include our child(ren) in the process, we authorize Dr. Cogan to speak with him/her/them confidentially to ascertain their needs. We agree that Dr. Cogan shall not, at any time, be required to release information provided to him by our child(ren).
9. We acknowledge and agree that Dr. Cogan will not act as a Parental Responsibility Evaluator (C.R.S. §14-10-127), a Child and Family Investigator (C.R.S. §14-10-116) (“CFI”), a Parenting Coordinator (C.R.S. §14-10-128.1), or a Decision-Maker (C.R.S. §14-10-128.3), and that he will not be able to assume those roles in our case in the future.
10. We have been advised that, even though Dr. Cogan is a board certified psychiatrist, he will not provide psychotherapy or medication for any of the members of our family, and he will not be able to provide those services to us after we have completed the mediation/arbitration process.
11. We understand that Dr. Cogan will not offer legal advice. Each parent is advised to retain his or her own attorney in order to be properly counseled about his or her legal interests, rights, and obligations.

12. We agree that, in the best interests of our child(ren), we shall fully disclose information pertinent to the issue(s) in our case. We acknowledge that our failure to do so could negatively impact the outcome of the mediation/arbitration process.
13. We understand that if mediation is to be successful, open and honest communications are essential. Accordingly, all written and oral communications, negotiations, and statements made during the course of mediation will be treated as privileged settlement discussions and are absolutely confidential unless:
 - a) Dr. Cogan believes that either of us or our children are in imminent danger of physically harming himself, herself, or another person.
 - b) Dr. Cogan believes that he has reason to suspect child abuse, in which case he must contact the Department of Human Services and/or the police.
14. Additionally, we understand that the information provided during the course of mediation may be used by Dr. Cogan when he makes an arbitration decision, also known as an arbitration award. In the event that arbitration becomes a necessary step in the process, confidentiality of the information provided during mediation is waived.
15. We agree that Dr. Cogan shall not be called as a witness in any capacity or be required to produce records in any legal proceeding unless we both agree in writing to waive our right to confidentiality with regard to the entire mediation/arbitration process.
16. We understand that mediation is voluntary and that either of us may terminate the process at any time. We also understand that Dr. Cogan may terminate the process at his sole discretion. If either of us decides to terminate the process, that person will discuss his or her decision in the presence of the other parent and Dr. Cogan.
17. If we are able to reach a successful conclusion in this matter, we may ask Dr. Cogan to prepare a Memorandum of Understanding for our review and approval. The Memorandum of Understanding may be used as the basis for a formal agreement that will be prepared by us or our attorneys for our signatures and submission to the Court.
18. In the event that we are unable to reach an agreement regarding the issue(s) in dispute, we ask that Dr. Cogan arbitrate the issue(s) based upon the information we have provided during the mediation process coupled with additional information that Dr. Cogan may need.
19. We understand that the arbitration process will commence only after all of the issues upon which we have agreed have been finalized in a Memorandum of Understanding or we have signed an agreement authorizing Dr. Cogan to incorporate our mediated agreement into the arbitration award that he issues.

20. We understand that we may proceed with arbitration in one of three ways:

a) An arbitration award may be based solely upon the information disclosed during the mediation process with no further information submitted to Dr. Cogan.

b) Dr. Cogan may be provided additional information in the form of written statements of facts and positions submitted by us and/or our attorneys. We understand that each of us will be provided a copy of these statements and be given the opportunity to respond in writing within specific time periods.

c) We understand that we may request a formal arbitration hearing. In that event, the following procedures shall apply:

i) The hearing date and time shall be determined by mutual agreement of the parties. Notice of the hearing shall be provided via U.S. mail, postage prepaid.

ii) Dr. Cogan, at his sole discretion, may grant a continuance of the hearing upon request of either party for good cause or by stipulation of the parties.

iii) All hearings will be held at Dr. Cogan's office.

iv) Either party may be represented by counsel at the hearing. A party intending to be so represented shall notify the other party and Dr. Cogan at least seven days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or when an attorney replies for the other party, such notice is deemed to have been given.

v) One week in advance of the hearing, or at such time designated by Dr. Cogan, each party shall submit a statement to Dr. Cogan and the other party or that party's counsel that summarizes the matters in dispute, the legal issues pending and legal authorities that support his or her position when appropriate, a list of witnesses who shall testify, and a brief summary of each witness' testimony.

vi) Either party may provide a certified court reporter provided that person assumes responsibility for all expenses associated with a record of the proceedings, or the parties may decide to share the costs if both parties wish for a court reporter to be present.

- d) We understand that there shall be no ex parte communication with Dr. Cogan during the arbitration process, meaning that he shall not speak with either parent and/or their attorneys unless the other parent and/or his or her counsel is present in person or by conference call.
 - e) We understand that we may agree to Dr. Cogan consulting with expert witnesses, such as psychotherapists, Child and Family Investigators, Parental Responsibility Evaluators, school teachers, physicians, etc. outside of the hearing and may agree that the information obtained from experts should be considered by Dr. Cogan when arriving at an arbitration award.
 - f) Additionally, we agree to provide Dr. Cogan any other information that he requests and that this information may also be used when he arrives at an Award.
21. We understand that upon completion of the arbitration process, Dr. Cogan shall issue an Award in writing and deliver a copy of the Award to each of us and our respective attorneys within fourteen (14) days from the date of the completion of the last session, or at a later date as circumstances dictate.
22. We understand that the arbitration award shall be binding on both parties subject to the provisions of C.R.S. 14-10-128.5 and shall be filed by Dr. Cogan with the District Court to be confirmed by the District Court in accordance with C.R.S. 13-22-213.
23. We understand that according to the provisions of C.R.S. 14-10-128.5, either of us may request a De Novo review by the Court. We furthermore understand that in the context of a De Novo review, the Court shall order the non-prevailing party to pay the fees and costs of the prevailing party as well as Dr. Cogan's fees incurred in responding to that request unless the Court finds that such an order would be manifestly unjust.
24. We understand that any application for correction or modification of an Award due to misstatement of facts, misspelling, or other such error, pursuant to C.R.S. 13-22-215, shall be directed to Dr. Cogan first, rather than the district court, within twenty (20) days of the issuance of the Award.
25. We authorize Dr. Cogan to interview our child(ren) privately to ascertain his/her/their needs regarding the issues to be arbitrated. The specifics of the discussion(s) between Dr. Cogan and our child(ren) shall remain confidential between them.
26. Appointments with Dr. Cogan by telephone or in person may be scheduled at the request of either parent with no written notice required unless we have a court order that provides for a different process. We agree to make a good faith effort to be available for med/arb conferences when requested by the other parent or Dr. Cogan.

27. We agree to pay Dr. Cogan a fee based on his hourly rate of \$250.00 (billed in 15 minute increments) for time spent speaking with us in person or by telephone, reviewing documents, conducting conferences with our attorneys, preparing a Memorandum of Understanding and/or an Arbitration Award, and any other time spent assisting us with the resolution of disputes between us. We further agree to pay Dr. Cogan for time spent reviewing and responding to emails. We understand that Dr. Cogan cannot guarantee the confidentiality of email communications even though he uses appropriate firewall protection.
28. We will provide Dr. Cogan an initial retainer in the amount of \$2,500.00 on or before the date of first meeting. Should the initial retainer be exhausted, Dr. Cogan may require further retainers in such amounts as he deems necessary. Dr. Cogan may cease providing services until such time as the retainer has been replenished. Dr. Cogan shall promptly refund any unused portion of the retainer at the completion of the mediation/arbitration process.
29. We agree to share the responsibility for payment of Dr. Cogan's fees and costs as follows: _____
30. CANCELLATION POLICY: We understand that, if we have reserved time for a session and must cancel the appointment, we must do so at least 24 hours prior to the appointment or Dr. Cogan shall charge the canceling parent for the full amount of the time reserved unless there is a genuine emergency, illness, or unsafe traveling conditions.
31. I have read, understand and agree to each of the provisions in this Agreement.

Date: _____

Parent

I have read, understand and agree to each of the provisions in this Agreement.

Date _____

Parent

ACCEPTED

Dana L. Cogan, M.D.

Date: _____