

SIMON MOLE MEDIATION, LLC

2525 Arapahoe Ave., Suite E4-135
Boulder, Colorado 80302
(303) 818-6787
E-mail: SimonMole@molemediation.com
Web: www.molemediation.com

Agreement to Decision Making Procedures

This Agreement to Decision Making Procedures is made by John Doe and Jane Doe, who are the parties to Somewhere County District Court Case No. 2016 DR 4. The Agreement is made under C.R.S. 14-10-128.3 and CJD 08-01. Provisions specific to this case are set forth in the Court's order approving a Stipulated Agreement on Parenting Time Issues, entered on January 18 2017.

1. Scope. This agreement concerns disputed issues arising from the implementation of the parties' parenting plan. By signing this document, the Parties agree to submit disputes to binding Decision Making by Simon Mole of Simon Mole Mediation, LLC.

The undersigned wish to resolve disputes through good faith negotiations facilitated by Mr. Mole in his role as Parenting Coordinator. In the event that the parties are unable to resolve a dispute, or if one party reasonably believes that negotiation would be pointless, that dispute may be submitted for Decision Making. A dispute is submitted when at least one party provides written notice of the issue in dispute, with that notice copied to the Decision Maker (DM), and to the other party. Notices shall be given by email.

Once an issue is submitted, Mr. Mole will refrain from any ex parte communication with either party on the issue in dispute. In general, all communications should be by email cc'd to the DM and the other party.

2. Time and Place. The Parties agree that decision-making will take place on dates and times specified by the DM, after consultation with both parties.

The DM will provide written notice of the date, time, and if appropriate the place, when the Decision will be made.

Once one party gives written notice of an issue for Decision Making the other party shall have five days to respond in writing by email. The DM may invite further statements and responses, and may make a written decision based upon the email exchange alone (but see below). If there is no response from one party to the other's notice the DM will make reasonable attempts to solicit a response.

If either party requests time to submit additional documents or other evidence for consideration by the DM, the DM shall defer making any Decision for a reasonable time to receive additional relevant evidence. Either party may request the DM to interview a child as part of that additional evidence. Any child interview will be made at the discretion of the DM, considering the age of the child and the nature of the issue in dispute: the DM may decline to interview a child.

If either party asks for a hearing, the DM shall hold a hearing before a Decision is made. The hearing may be in person, by telephone, or by video conference, with the format of the hearing within the discretion of the DM.

The hearing rules are set forth below. The Plaintiff is simply the party who first initiated the Decision Making process by providing the written notice of an issue needing a Decision. In terms of hearing procedure, the Defendant goes second, but may equally assert his or her own properly noticed issues for decision.

3. Decision Making Hearing Rules

- a. The hearing will be informal. The object is to dispense justice promptly and economically. The Decision Maker will ensure that evidence is offered, and questioning conducted in an orderly and expeditious manner.
- b. In conducting the hearing, the Decision Maker will be guided by basic notions of fairness. Each party will be given a substantively equal and comparable opportunity to present their perspectives. The Decision Maker may consider evidence, and call and question any witness consistent with the Decision Maker's obligation to be an impartial fact

finder, favoring neither one party, nor the other.

- c. The order of proceedings at the hearing will be as follows:
 - i. Before commencing the hearing, the Decision Maker will briefly describe and explain the purposes and procedures of the hearing. Any claim must be proven by a civil preponderance of the evidence.
 - ii. The Plaintiff will offer testimony as to their perspective, and evidence as to the facts concerning any claims made against the Defendant. After such testimony, the Decision Maker, Defendant, or counsel may examine the Plaintiff.
 - iii. The Defendant will offer testimony as to their perspective and evidence to rebut any claims of the Plaintiff. The Defendant may also offer testimony and evidence about any counter-claims they have against the Plaintiff. After such testimony, the Decision Maker and the Plaintiff or counsel may examine the Defendant.
 - iv. The Plaintiff will be allowed an opportunity to offer testimony and evidence to rebut any counter-claims made by the Defendant. If either party offers the testimony of additional witnesses, the order of testimony and the extent of questioning shall be within the discretion of the Decision Maker
 - v. Upon the conclusion of such testimony and examination, the Decision Maker may further examine or allow examination and rebuttal testimony and evidence as deemed appropriate.
 - vi. At the conclusion of all testimony and examination, each party will each be permitted to make a closing statement.
- d. The Colorado Rules of Evidence do not apply to hearings under these rules. However, parties or their counsel may request that the Decision Maker give no weight to evidence that they find objectionable. The basis for any such requests must be explained in plain English, rather than by reference to the Colorado Rules of Evidence.

- e. Decisions by the Decision Maker will be made according to the laws of Colorado, including the Colorado Revised Statutes.

4. Default. The DM may proceed in the absence of any party or representative who, after signing this agreement, refuses to participate, fails to be present, or fails to obtain a postponement. A Decision shall not be made solely on the default of a party. The Decision Maker shall require the party who is participating or present to submit such evidence as the Decision Maker may require for the making of a Decision.

5. Decision. A signed and dated written Decision is effective immediately upon issuance, and shall continue in effect until vacated, corrected, or modified by the DM, or until an order is entered by a court pursuant to a *de novo* hearing under CRS 14-10-128.3(4). The DM is required to file decisions within 21 days of issuance, and any requests for correction or modification by the DM must be made within that time. Parties have 35 days after a decision is issued to request a *de novo* review by the court. CRS 14-10-128.3(4)(a).

6. Fees. The Decision Maker charges \$200 per hour (\$100 per party). For complex and /or longer decisions the DM will provide periodic billing statements, listing all services performed and detailing the time spent and the charges incurred. For simpler matters a single billing statement will be provided once the Decision is made. Fees are due when timesheets are presented for payment. The DM is under no duty to release a Decision until paid in full. One party may pay for the other and seek re-imburement through a Decision re-allocating fees, or by application to the Court.

7. Payment Arrangements. Payments may be made by credit card; personal check; trust account check; cash (with receipt provided), or money order. Any party paying by credit card agrees to the Decision Maker charging his or her credit card for the fees. If there is any dispute regarding payment of fees by credit card, which is resolved in favor of the Decision Maker, the party agrees to the Decision Maker charging any dispute resolution fees to the card of the party who raised the dispute. The Parties agree that if the bank returns payment by check, the party who wrote the check will replace the check with cash or certified funds and be assessed all bank charges plus a \$20 handling fee. Interest of 1.5% per month is due on all unpaid amounts.

8. Files and Documents. The Parties acknowledge that the files created by the Decision Maker in his office belong to Simon Mole Mediation, LLC. Any documents provided by the Parties become the property of the Decision Maker. The Parties authorize the Decision Maker to destroy or dispose of all files, exhibits, documents and papers in his possession regarding the Parties' case after the last decision-making session. The document retention policy of Simon Mole Mediation LLC is to erase electronic copies, and to destroy any notes taken, together with all hard copies of documents provided by the Parties. This will occur once the time to appeal any Decision has passed, or at the termination of his appointment as DM. Simon Mole Mediation, LLC will only retain a copy of this agreement, and the written record of any Decisions actually filed with the Court.

9. Complaints. The Court retains the discretion to terminate the appointment of the DM at any time for good cause, and complaints about the DM may be directed to the appointing court at the address on the order of appointment. Simon Mole is a lawyer and former magistrate. In working as DM he does not represent or provide legal advice to either party. His role is much like that of a private judge, and he enjoys immunity from liability in any claim for injury that arises out of an act or omission occurring during the performance of his duties as DM. CRS 14-10-128.3(7)(a). Simon Mole is not a mandatory reporter for child abuse in his professional roles as attorney, DM or PC, however he may report suspected abuse. CRS 19-3-304(3).

Parties are each advised to retain their own attorney in order to be properly counseled about their legal interests, rights and responsibilities.

The undersigned Parties understand and acknowledge the above:

Petitioner date

Respondent date

Counsel for Petitioner date

Counsel for Respondent date