

# WELCOME TO MIND THE GAP:

## A GUIDE TO ETHICAL AND COMPLETE FAMILY AGREEMENTS

- **Open the Florida Mediator Rules**

Search for:

"Florida Rules for Certified Mediators"

OR follow this link:

<https://www.flcourts.org/content/download/216763/1966524/rules-certified-court-appointed-mediators.pdf>

Florida Rules for Certified &  
Court-Appointed Mediators

*Effective March 2018*



# A GUIDE TO ETHICAL AND COMPLETE FAMILY AGREEMENTS

**Presented August 16, 2019**

**By: Kate Marshman and  
Veronica Jackson**



## PRESENTER HIGHLIGHTS

### Veronica R. Jackson

- 2nd Circuit ADR Director
- Member, Family Law Section of the Florida Bar (non-attorney)
  - 350(+) Family Mediations
  - 200(+) hours Teaching CME
- Approved County-Civil Primary Trainer & Family Assistant Trainer
- Florida Supreme Court Certified Family, Dependency, County-Civil and Circuit-Civil Mediator

### Kate Marshman

- 2nd Circuit Contract Mediator
- Florida Bar Member 5 years

A yellow notepad with a white label that says "SUMMARY". The notepad is open, showing lined pages. The label is a white rectangle with a black border, centered on the left page.

## SUMMARY

- How to be present
- Ability to Find Patterns and Make Assumptions
- Mediators Never Fill Gaps
- Mediators Highlight Gaps for Parties
- Filling Gaps Avoids Litigation



## PRACTICE BEING PRESENT

- #1** Take three deep breaths. Inhale for 2 seconds and exhale for 4 seconds.
- #2** Let your tongue completely relax in your mouth. Let your mouth open to a relaxed position.
- #3** Tense your hands and then relax. Tense your hands and arms and then relax. Repeat.

# AUTOPILOT



- Have you ever been thinking about something while driving in the car and ended up at home instead of at the store ?
- Our brain uses context and follows patterns in order to fill in gaps, sometimes before we even realize it.



**YOUR MIND IS RUNNING THIS AUTOMATICALLY  
WITHOUT EVEN THINKING ABOUT IT.**



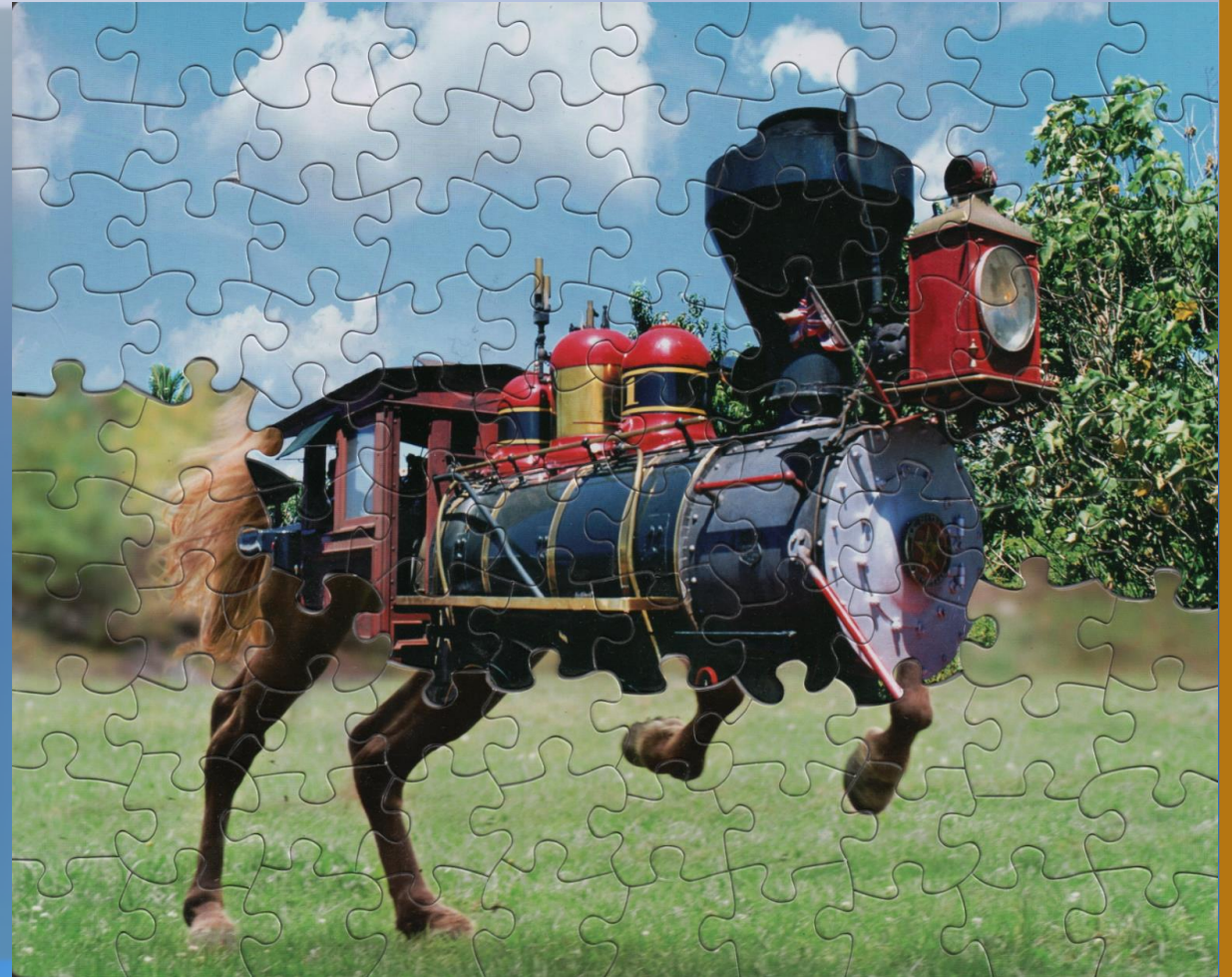
# AUTOPILOT

**For example, it doesn't matter in what order the letters in a word appear, the only important thing is that the first and last letter are in the right place. The rest can be a total mess and you can still read it without a problem.**



## RESEARCHING THE PUZZLE

- University of Glasgow research from 2011
- "Effectively, our brains construct an incredibly complex jigsaw puzzle using any pieces it can get access to," explained researcher Fraser Smith. "These are provided by the context in which we see [images], our memories and our other senses."





A person wearing a red jacket and dark pants is sitting in a meditative pose on a large, grey rock. They are facing a calm lake that perfectly reflects the surrounding landscape. The landscape consists of steep, rocky mountains with patches of snow and dense evergreen forests. The sky is blue with a few wispy clouds. The overall scene is peaceful and scenic.

# NAVIGATING GAPS ETHICALLY



## THE MEDIATOR'S ROLE

- While filling in the gaps is usually very helpful to complete our daily tasks, filling in the gaps as a mediator can lead to ethical violations.
- Let's practice spotting ethical violations.

### Open the Florida Mediator Rules

Florida Rules for Certified & Court-Appointed Mediators

*Effective March 2018*



An illustration featuring several stylized hands of various skin tones (white, light orange, and dark orange) raised against a background of vertical brown stripes. The hands are positioned at different heights, with one white hand reaching the highest. A white rectangular box with a thin black border is centered in the lower half of the image, containing the text "VOLUNTEER OPPORTUNITY".

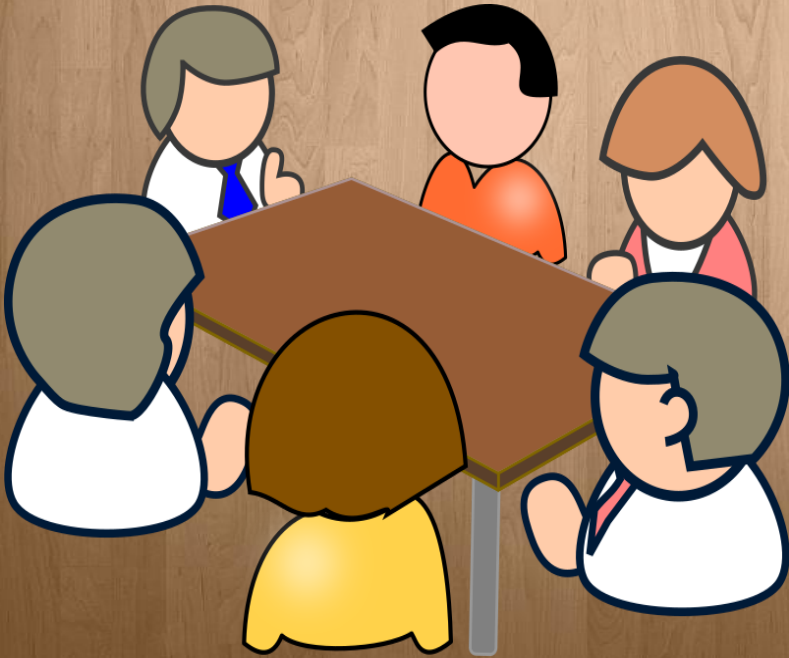
**VOLUNTEER OPPORTUNITY**



## WRITING THE AGREEMENT

Dept. of Revenue  
On behalf of Ryan  
Sherry Silver v. Reeves

- Parties: Mother, DOR Representative and DOR Attorney versus Father and Attorney
- Issue: Child Support Modification.
- Mediator recalculates child support
  - Father's Obligation = \$425 / month.
- Mediator asks the father “when do you receive your paycheck.”
- The father responds “The last day of the month.”



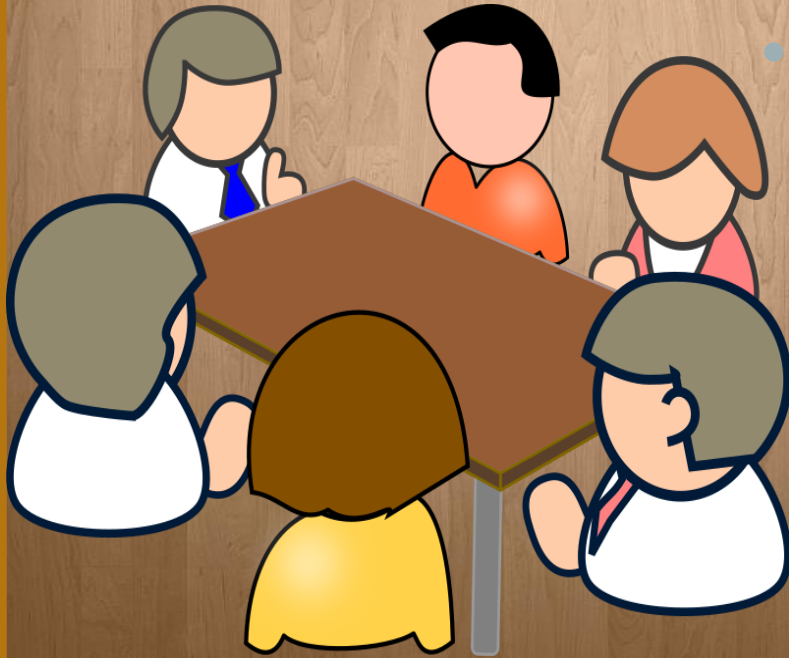
## What gaps has the mediator filled in for the parties?

Dept. of Revenue

On behalf of     Ryan

Sherry Silver v. Reeves

- The mediator writes the following into the agreement:  
“The parties agree that the father’s child support payment is \$425.00 a month.
- Payments shall be made by income deduction order and shall be directed through the Florida Disbursement Unit.
- Child support shall commence on August 31, 2019 and shall continue to be due on the last day of each month, until the support obligation terminates as outlined in section 4 of this agreement.”





# WRITING THE AGREEMENT

## ITEMS DECIDED BY PARTIES

- Modification of Child Support
- Child Support Amount of \$425



## ITEMS DECIDED BY MEDIATOR

- Child Support commences on Aug. 31, 2019.
- Child Support is due on the last day of each month.
- Child Support shall be paid to the Florida Disbursement Unit.
- Child Support shall be paid through Income Deduction Order (IDO)

**The Mediator should ask parties to agree on the dates and method of child support payments rather than make assumptions.**



## **WHICH RULES WERE VIOLATED?**

**Rule 10.220 states “The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision-making authority, however, rests solely with the parties.”**

## THE MEDIATOR'S ROLE IS TO HIGHLIGHT GAPS



## WRITING THE AGREEMENT

**DOR on**  
**behalf of**  
**Sherry v. Ryan**  
**Silver Reeves**



- Agreement: “The parties agree that the father’s child support payment of \$425.00 a month shall be made by income deduction order and shall be directed through the Florida Disbursement Unit.
- Child support shall commence being due on August 31, 2019 and shall continue to be due on the last day of each month, until the support obligation terminates as outlined in section 4 of this agreement.”



## WRITING THE AGREEMENT

**DOR on**  
**behalf of**  
**Sherry v. Ryan**  
**Silver Reeves**



- After the Mediator provides the agreement, the father and his attorney ask the mediator to talk in a private room.
- Father asks about:
  - Lowering his support payment further
  - The Income Deduction Order
  - The child support he paid through October.
- Mediator is in a hurry and plans to:
  - Change agreement to say child support starts October 31st.

# WRITING THE AGREEMENT

## ITEMS DECIDED BY PARTIES

- Nothing
  - Only the father wants to change the date support commences.

**The Mediator cannot coerce the parties to reach this outcome based on the mediator's professional opinion.**

## ITEMS DECIDED BY MEDIATOR

- Child Support begins in October 31.
- Child Support shall be paid through Income Deduction Order (IDO)
- Counsel for the father will agree that an IDO is required.
- Opposing counsel for DOR will not accept child support unless and IDO is required.
- The Judge will side with DOR and require an IDO.

## **WHICH RULES WERE VIOLATED?**

- **Rule 10.370 “Personal or Professional Opinion.**
- **A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.”**



# THE MEDIATOR'S ROLE IS TO EXPLORE OPTIONS





# NEGOTIATING THE AGREEMENT

**DOR on**  
**behalf of**  
**Sherry v. Ryan**  
**Silver Reeves**

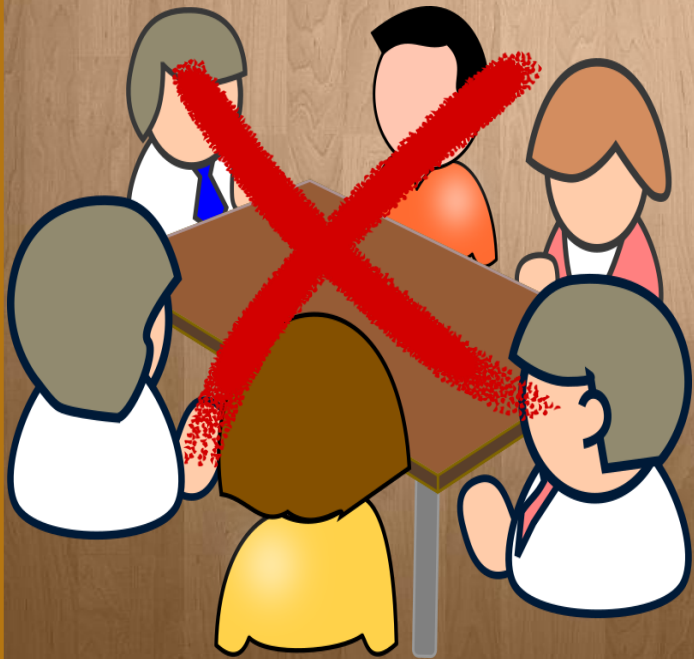


- Mediator is in a hurry and plans to:
  - Change agreement to say Child Support starts October 31st.
- After the mediator leaves the attorney tells his client
  - Income Deduction Order is standard.
  - Chance of winning in court.
- Father complains:
  - Mother is in control of the mediator
  - Maybe having trial would be better than mediation.



## NEGOTIATING THE AGREEMENT

**DOR on  
behalf of  
Sherry Silver** v. **Ryan  
Reeves**



- The Mediator is in a hurry and says “Counsel, talk to your client about the IDO being required by DOR. The judge will give them that.”
- After the mediator leaves the father tells his client “Are you sure we shouldn’t just see if the judge gives us a better deal?”
- **Now the mediator has created an appearance of bias towards the Mother. In addition, the father is starting to lose faith in the agreement between the parties.**

## **WHICH RULES WERE VIOLATED?**

- **Potential Ethical Violations:**
- **Rule 10.330 Impartiality** “A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.”



# NEGOTIATING THE AGREEMENT

**DOR on  
behalf of**

**Sherry v. Ryan  
Silver Reeves**

- Mediator provides Mom, DOR Representative and DOR Attorney updated agreement.
- The DOR Representative and Attorney do not remember if the Judge ordered the \$1,500.00 as a prepayment of child support.
- Mom wants money this month.
- Mom wants direct payment, not Disbursement Unit.
- The DOR Representative agrees to direct payment.
- The Mediator suggests that the agreement draft is in Mom's best interest and that she can sign or impasse the mediation.



# NEGOTIATING THE AGREEMENT

**DOR on  
behalf of  
Sherry v. Ryan  
Silver Reeves**



- The mediator responds, “The state takes a little time, but they also will help you get all the money you are owed. This is your best deal and Dad isn’t going to agree to pay this month anyway. Initial each page and sign here, I have another mediation starting soon.”
- **The Mediator not only ignored the decisions made by the Mother he also decided what the father wanted without asking. The mediator prevented the parties from exercising self-determination.**



## **WHICH RULES WERE VIOLATED?**

- **Potential Ethical Violations:**
- **Rule 10.310 Self-Determination** “Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.”
- **“Coercion Prohibited.** A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.”

## THE MEDIATOR'S ROLE

- Correcting Ethical Violations:
- Rule 10.410 Balanced Process.
- A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.





## EXAMPLE OF THE MEDIATOR'S ROLE

**DOR on**  
**behalf of**  
**Sherry v. Ryan**  
**Silver Reeves**



- How could the mediator correct this situation?
  - Ask parties for date and method of first payment.
  - Relay the Father's offer to pay Mother directly starting in October.
  - Relay the Mother's acceptance of the Father paying directly but requesting that payments begin in May.
  - Ask both parties questions about the effect of the Judge's Order for the Father to pay support prior to mediation.

## A REMINDER NOT TO MAKE ASSUMPTIONS







# IDENTIFYING AGREEMENT GAPS

# SMALL GROUP EXERCISE

## Real Mediation Agreement Example



Time Sharing



A yellow notepad with a white label that says "SUMMARY". The notepad is open, showing lined pages. The label is a white rectangle with a black border, centered on the left page.

## SUMMARY

- How to be present
- Ability to Find Patterns and Make Assumptions
- Mediators Never Fill Gaps
- Mediators Highlight Gaps for Parties
- Filling Gaps Avoids Litigation



**BONUS CONTENT**



IDENTIFY  
THE GAP

The children shall be picked up by the parent who will exercise parenting time at the other's residence, school or daycare, whichever is applicable at the time, or at a place as may be otherwise agreed on a case-by-case basis.

- The son, First Last Name, shall reside with the Father. The daughter, First Last Name, shall reside with the Mother. Each parent shall be entitled to reasonable and liberal timesharing with the Children by agreement of the parties in addition to enjoying time-sharing with the children on alternate weekends throughout the year.
- Each parent shall request timesharing a reasonable time prior to when it is desired, and the other parent shall not unreasonably withhold her consent for such a visit. In the event that the parties are unable to agree on such timesharing, they shall mediate the issue prior to petitioning for Court determination.

## IDENTIFY THE GAP

- FAMILY TIMESHARING SCHEDULE

- The child, Jane Doe, shall reside with the Father; the child John Does shall reside with the Mother. Each parent shall be entitled to reasonable and liberal timesharing with the children by agreement of the parties in addition to enjoying timesharing with the children on alternate weekends throughout the year. For example, the father might have weeks 1 and 3 and the mother might have weeks 2 and 4. Each parent shall request timesharing a reasonable time prior to when it is desired, and the other parent shall not unreasonable withhold her consent for such visit.

- CHILD SUPPORT

- The parties recognize that each of them has an obligation to help provide for the support of the minor children. Pursuant to the child support guidelines, the mother is obligated to pay \$130.31 however the father agrees to pay the Mother \$1,000.00 per month.



## IDENTIFY THE GAP

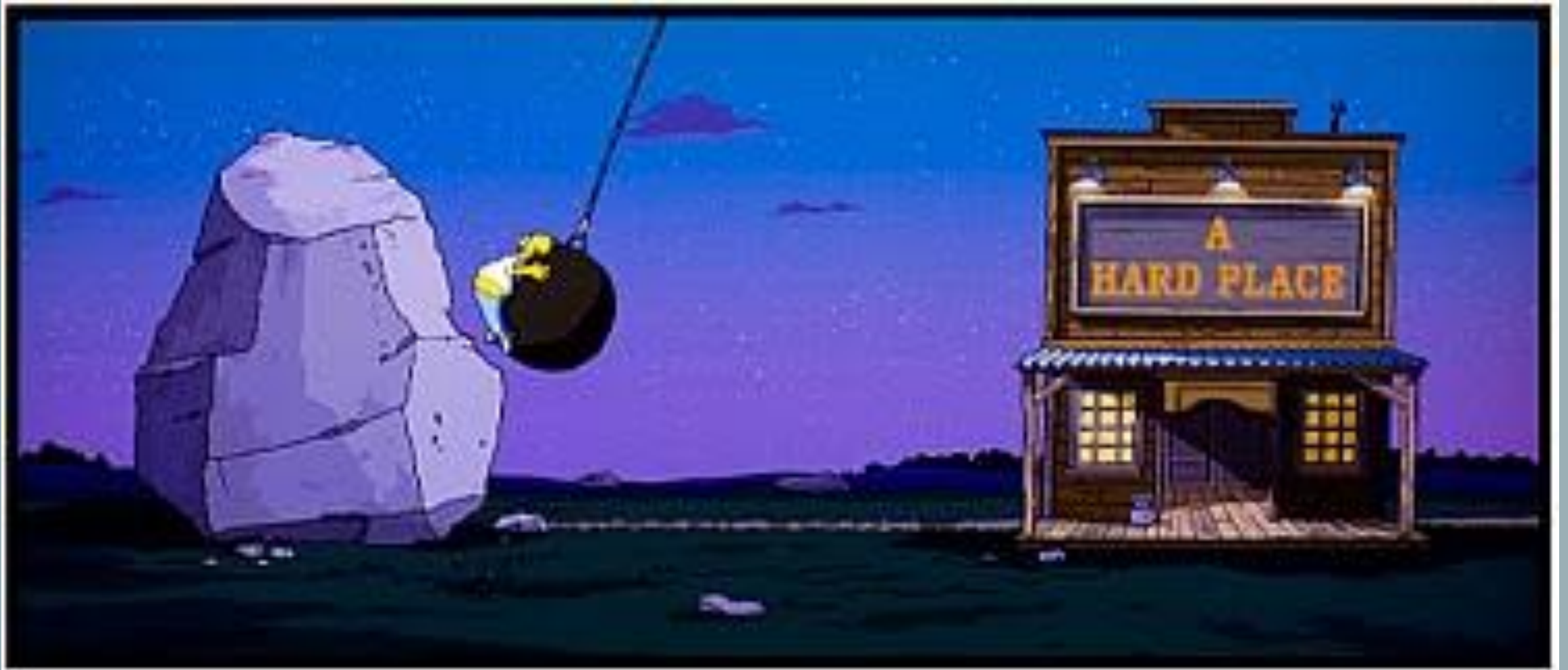
- ***Summers.*** Starting the first Saturday after the last day of the school year in the spring, and continuing until the Monday before the first full week before the school year begins in late summer or early fall, the parents shall utilize the following rotating time-sharing schedule, which is a 3 day, 2 day 2 day schedule:
  - Friday afternoon through Monday morning with one parent (staying overnight Friday, Saturday and Sunday)
  - Monday morning through Wednesday afternoon with the other parent (staying overnight Monday and Tuesday); and
  - Wednesday morning through Friday afternoon with one parent (staying overnight Wednesday and Thursday)

## IDENTIFY THE GAP

- All week day exchanges will take place at the earlier of
  - (1) the summer camp or day care recesses, if both parents supply all of the children's clothing and accessories;
  - (2) one hour after summer camp or day care recesses if both parents do not supply all of the children's clothing and accessories;
  - (3) Or, 6:00 PM if a parent is unable to begin time-sharing immediately after summer camp or day care recesses or if there is no summer camp or day care on that day.



# ADVANCED UNNECESSARY GAP FILLERS



## UNNECESSARY GAP FILLERS

- XI. LEGAL REPRESENTATION

- Each party has reviewed this agreement with their attorney or has been informed that they have the right to obtain legal representation prior to signing this agreement. Each party fully understands the facts and has been informed as to their legal rights and obligations pursuant to the laws of Florida and this agreement. The mediator was neutral and the parties did not receive legal advice from the mediator or rely upon any opinions of the mediator in reaching the settlement agreement.

- XII. CONFIDENTIALITY

- All matters raised at the conference remain privileged, except as provided or permitted by law, or unless otherwise agreed to by all parties.

- XIII. VOLUNTARY AGREEMENT

- The foregoing report and agreement is fully understood and stipulated to by the undersigned parties. Each party is signing this agreement freely and voluntarily intending to be bound by it.

## UNNECESSARY GAP FILLERS

- According to MEAC 2018-01
- **It was improper to include this term. The language adds to the written agreement substantive terms which would not have been raised by the parties. The MEAC believes the appropriate location for such language is in a separate agreement between the mediator and the parties rather than in the parties' settlement agreement.**

### XI. LEGAL REPRESENTATION

Each party has reviewed this agreement with their attorney or has been informed that they have the right to obtain legal representation prior to signing this agreement. Each party fully understands the facts and has been informed as to their legal rights and obligations pursuant to the laws of Florida and this agreement. The mediator was neutral and the parties did not receive legal advice from the mediator or rely upon any opinions of the mediator in reaching the settlement agreement.

### XII. CONFIDENTIALITY

All matters raised at the conference remain privileged, except as provided or permitted by law, or unless otherwise agreed to by all parties.

### XIII. VOLUNTARY AGREEMENT

The foregoing report and agreement is fully understood and stipulated to by the undersigned parties. Each party is signing this agreement freely and voluntarily intending to be bound by it.



# UNNECESSARY GAP FILLERS

## Option 1: CHANGES OR MODIFICATIONS OF THE PARENTING PLAN

Temporary changes to this Parenting Plan may be made informally without a written document. However, if the parties dispute the change, this Plan shall remain in effect until further order of the court. Notwithstanding, any substantial changes to this Plan must be sought through the filing of a supplemental petition for modification.

## Option 2: MODIFICATION OF PARENTING PLAN

Parents are encouraged to vary terms of this Parenting Plan as best meets the needs of the children first and the parents second. If parties mutually agree to modify any terms of this Parenting Plan, they may do so provided that such modification is in writing and signed by both parties. Such written executed modified agreement shall be fully enforceable by the Court, even if not previously ratified by Court order.

- Option 3:
- MODIFICATIONS TO THIS AGREEMENT
- a. This agreement may be modified on a temporary or permanent basis provided both parents agree in writing. When the parents do not agree, this agreement shall remain in full force and effect until modified by the Court.
- b. If both parents agree to make a change to this agreement, such modifications must be in writing, signed by both parties, and filed with the Court.

## PRACTICE BEING PRESENT

- **Visit here for more information:**
- <https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/relaxation-technique/art-20045368>
- <https://www.psychologytoday.com/us/blog/fulfillment-any-age/201501/6-ways-get-more-comfortable-others-and-yourself>
- <https://www.prevention.com/life/g20439441/reduce-stress-with-these-2-minute-solutions/?slide=8>