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## Limits to Confidentiality: A Potential Divorce Mediation Pitfall

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What are the limits to confidentiality at divorce mediation? This issue is of growing interest given the rise of mediation as a sensible and cost-effective alternative to divorce litigation.

Earlier this year, a New Jersey Appellate court held that a written Memorandum of Understanding (MOU) prepared and signed by the parties' mediator is unenforceable. The MOU is a nonbinding agreement between two (or more) parties which outline the details of an agreed upon understanding, which includes each parties' requirements and responsibilities.

In this case, the court did not need to reach the issue of whether the MOU was accurate, but determined that absent both parties' signatures it was simply a confidential part of the mediation process.

Further, the court stated that if both parties had chosen to waive the confidentiality privilege, no problem would exist. In this specific instance, one party was now denying that a settlement had been achieved, which meant the MOU was inadmissible as evidence at trial.

This is an important lesson for all persons involved in mediation to learn. You must always cross your t's, dot your i's, and always sign the MOU.

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