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FORENSIC CHILD CUSTODY AGREEMENT

General Information:

I have been appointed by the Court to conduct an impartial evaluation of comparative custodial fitness. My purpose in conducting this evaluation is to gather information that will enable me to formulate an opinion concerning what custody/visitation arrangement is most likely to be in the best interests of your child(ren). Though the manner in which my fees will be paid has been determined either by the Court or through negotiations among the parties and their attorneys, and though the Court does not pay my fees, the work that I will be doing will be done for the Court. Regardless of the source from which impartial evaluators receive remuneration, impartial evaluators are expected to operate as though the Court employed them. It is particularly important that this position be understood when fees are being paid only by one of the two parties. The fee-paying party cannot simply call a halt to the evaluation. The authority to instruct an evaluator to perform no further services rests with the Court, not with the party who bears the financial responsibility for payment of the evaluator's fees (nor with that party's attorney).

Unless otherwise instructed by the Court, copies for each of your attorneys and the Attorney for the Child if there is one in your case will be given to the Court.

With the exception of information presented to you in order to afford you an opportunity to respond, information gathered by me is ordinarily not disclosed prior to the completion of the evaluation. Prior to the completion of my report, information will be released only in response to direction from the Court. Interim recommendations will *not* be offered.

The authority to release copies of the file (or any portions of it) or to disclose the contents of the file to anyone other than the Court and the attorneys in this matter rests with the Court.

Privilege, Confidentiality and Privacy:

Principles of confidentiality and privilege do not apply within the context of an assessment such as the one being conducted. Information provided by you, regardless of the form in which it has been provided (your statements, tape recordings, diaries, correspondence, photographs, etc.) may be shared with others involved in the evaluation (including, where necessary and appropriate, children and collateral sources.) By presenting information to others, verification of information provided by you can be sought and the other party can be afforded the opportunity to respond to

allegations that may have been made. Statements made by children may have to be cited in an advisory report and it is, therefore, important that you not mislead your child(ren). Do not tell a child that what is said is confidential. It is not. Information concerning your payments (amounts, source of payments, form of payments) is also not confidential although will not be disclosed by me to your children.

The process of, and information contained in, the forensic custody evaluation are intended solely for the Court, the attorneys and the parties. Therefore, any audio or video taping of interactions with the evaluator and any of the parties is not permitted and will be considered a violation of this agreement.

Fees:

Responsibility for fees was set by the court and was outlined in the order by the judge. Note that fees for an assessment of this type are not reimbursable by health insurance.

It must be emphasized that the \$_____ retainer does NOT represent the total cost of the evaluation. I will be paid at \$_____ per hour which includes but is not limited to time spent interviewing you or your children, reviewing documents, reviewing recorded information, reviewing electronic communications, and telephone conversations or in person interviews with collateral sources. If you are responsible for any portion of fees incurred I will send you a statement at the end of each month detailing the costs of each service I performed. At that time if the balance of the retainer is under \$1000 I require that you replenish the retainer with an amount that will be determined by what I expect I will need to complete the evaluation. If I do not receive this money within 10 days of requesting it, your evaluation will not proceed until such time as I receive this retainer and the Court will be informed as to the reason for this interruption.

Fees cannot be apportioned based upon what was done for whom. All work relating to the assessment (obtaining and reviewing documents, contacting others for information, etc.) is done in order to obtain as much relevant information as possible and cannot be viewed as work done for one party or for the other. Similarly, fees cannot be apportioned in a manner that involves assigning financial responsibility for the fees associated with certain services to one party and responsibility for fees associated with other services to the other party.

There may be times when an individual being evaluated will be required to pay fees for time expended by me in obtaining and reviewing information that the individual would have preferred that I not obtain or review. Similarly, there may be times when the financially responsible party(parties) will be required to pay fees in connection with the evaluation of a third party whom the financially responsible party(parties) would have preferred that I not evaluate.

If it should become necessary for me to report allegations of abuse/neglect to Child Protective Services (CPS), the financially responsible party(parties) will be billed for any time expended in filing the report, being interviewed by CPS, etc. This may mean that a financially responsible party will have to pay for time expended in reporting him/her to CPS.

There may be times when the actions of one party will make it necessary for me to make phone calls and/or write letters. In calculating fees for my services, no distinction is made between time expended in administrative matters and time expended in providing psychological services. Fees for time expended in administrative matters are apportioned as are all other fees. In summary, fees are charged for time expended in any/all professional activities associated with the evaluative process or arising from the evaluative process. This includes time expended in addressing fee-related matters.

It is to your advantage to organize any material that you submit for my consideration. You are paying for my time and more time is required to review material if it has been poorly organized. Any items submitted to me should be clearly identified with your name. This is particularly important in the case of photographs, audio tapes (including microcassettes), diary pages, and notes.

If there is a trial and I am called to testify, the fees I charge will be paid by the party requesting my presence, unless other arrangements have been made in advance or the Court has ordered that responsibility for these fees be apportioned in some other manner. Additionally, the scheduling of my testimony will be done in consultation with me and with an appropriate recognition of possible conflicting personal or professional commitments. In the unlikely event that an appearance by me is requested by the Court or by the attorney for the child, my fees will be paid by the party(parties) responsible for the other costs associated with my evaluation and in the same proportions.

Return of Fees:

Though fees paid for services rendered are not returned even when an evaluation has not been completed, you are not expected to pay for services that have never been performed. Since fees for certain services (such as the report outlining the findings of the evaluation) are paid in advance, certain circumstances (such as a settlement) may make it unnecessary to perform services for which fees have already been paid. Under such circumstances, fees paid in advance will be refunded. It must be understood, however, that no refunds will be made until I have been formally notified, either by the Court or by the attorneys for both parties, that it is the position of all involved that my task has been completed, that no further services will be requested, and that I am discharged. Upon receipt of such formal notice, a final account statement will be prepared and any funds owed by me to the financially responsible party(parties) will accompany the final account statement.

Limitations, Risks, and Services NOT provided:

The profession of psychology has not developed specific methods and procedures for use in assessing comparative custodial fitness and neither the profession of psychology nor the State of New York has established specific criteria. The criteria I employ, as well as the methods and procedures I use, have all been chosen by me.

It must be understood that I cannot provide psychological advice to individuals whom I am evaluating. If counseling or psychotherapy services are desired, I will be pleased to provide the

names of appropriate professionals. I cannot provide emergency assistance to someone whom I am evaluating. If an emergency situation arises, assistance should be sought through the police, the nearest hospital, or your attorney (depending, of course, on the nature of the emergency).

Unless I have been directed otherwise by the court, I will presume that all items in the case file are discoverable (that is, subject to examination) by both parties, their attorneys, the attorney for the child(ren), and any expert(s) who may have been retained by counsel for either party. In the event of a trial, unless I have been directed otherwise by the court, all items in the case file will be brought with me to court any day that I am scheduled to offer testimony.

If there is a trial and if you should request that I testify, I am obligated to maintain my impartiality and openness to new information throughout the course of the evaluation and during the trial. It is *not* my obligation to defend the precision of facts reported, the accuracy of data interpretations made, or the validity of opinions offered in the face of newly introduced information that might reasonably call them into question. Though it is more likely than not that my testimony will explain and be supportive of the contents of my report, no assurances can be offered that this will be the case. A cross-examining attorney may bring to my attention information of which I was unaware (either because it was not brought to my attention during the course of the evaluation or because it pertains to events occurring subsequent to the issuance of my report). The attorney may ask how the new information might affect my professional opinion of you and/or your spouse. I will, of course, respond honestly. You must recognize that I am not an advocate for the person who seeks my testimony and that I am obligated to offer any/all pertinent information in the case. I must, if asked, for example, provide information concerning your parenting deficiencies and your spouse's parenting strengths. Put most simply, fees paid to me represent compensation for time expended. The person paying my fees cannot be assured that my testimony will be helpful to his/her case.

Psychological Testing:

It is expected that when individuals being evaluated come to our office for the purpose of taking psychological tests they will arrive unaccompanied. Spouses, children, companions, and friends can serve as sources of distraction. If someone must transport the test-taker, that person will be asked to leave and not return until the test-taker has finished.

Submission and retention of documents:

You are free to provide me with any documents that you wish me to review, however it is best to consult with your attorney to determine whether to do so, and whether any of these documents should be shared with the other party's attorney or attorney for the child. Since I may be called upon to produce all items (documents, tapes, photographs, etc.) that I have considered in formulating my professional opinion, it is my policy to retain any items that are presented to me for my consideration. You are therefore strongly encouraged to make copies of any materials that you or your attorney intends to submit to me. If you neglect to make copies and if you later require copies, you will be charged for time expended in preparing copies.

Out-of-session contact:

Out-of-session contact (casual waiting-room conversation, telephone calls, etc.) should be avoided. It is to your disadvantage to communicate information to an evaluator in an informal manner. Phone contact should be limited to scheduling appointments and addressing other procedural matters. Information concerning matters pertinent to the evaluation itself should not be communicated by phone.

E-mail may be used to facilitate scheduling. Parents should not send case-specific information to me via e-mail unless it is requested by me. Parents should not copy me on their e-mail correspondence to each other or to their attorneys.

Obtaining additional information:

Individuals being evaluated must agree to authorize me to obtain any documents that I may wish to examine and to authorize communication between with individuals who, in my judgment, may have information bearing upon the subject of the assessment, and myself.

Where specific instructions concerning those to be evaluated (and how extensively they are to be evaluated), information to be obtained, etc. has not been included in the order appointing me, the decisions concerning these matters will be made by me. There may be instances in which I will be asked to review information that I reasonably believe is likely to be more prejudicial than probative and instances in which I will be asked to contact individuals whom it would, in my judgment, be inappropriate to contact. I must be the final arbiter in such situations.

Contact with attorneys:

Once I have received a Court Order that I will be conducting an impartial evaluation of comparative custodial fitness, I endeavor to avoid *ex parte* communication with the attorneys representing the litigants. I may speak to the attorney for the child for procedural matters such as scheduling or payment issues.

Allegations of abuse/neglect:

It must be understood that I am a mandated reporter and *am required by law to report allegations of abuse or neglect* (even if they have been previously reported). If allegations are made, they will be reported and my action in reporting them must not be interpreted as a display of support for the individual who has made the allegations or as an indication that I disapprove of the alleged actions of the person who has been accused. Most importantly, it must not be inferred that my reporting of such allegations suggests that I find them credible.

Post-evaluation developments:

Following the meeting at which a draft of my report is reviewed, I will take reasonable steps to avoid contact with the litigants and with counsel. No substantive response will be provided to letters, faxes, e-mails, or phone messages. If a trial has been scheduled and either party feels that

new information should be considered by me, this will be done only if a formal request is made by both attorneys or ordered by the Court and only if each party is afforded an opportunity to present his/her perspective on the additional information.

Authorization for Evaluation:

Your signature below indicates (1) that you have received, read, and understand my policies and procedures; (2) that you recognize that neither the principle of confidentiality nor the principle of privilege applies to any information in my file concerning this matter; and, (3) that you are authorizing the release of my advisory report, to the Court with copies for the attorney for the child, and the attorneys for both parties.

With specific regard to information that might ordinarily be protected from disclosure by HIPAA provisions, in signing this document, you acknowledge that pursuant to HIPAA Section 164.512(e)(1)(i) of the Code of Federal Regulations, disclosures of otherwise protected health information may be provided in the course of judicial or administrative proceedings. Your authorization for the release of my file is not qualified; it includes an authorization to release information provided to me by health service providers who may have been collateral sources of information. You also acknowledge that once I have released my report to the Court, I no longer exercise control over who may access the information contained in this evaluation.

Signature _____

Printed Name _____

Date _____