

BENJAMIN D. GARBER, PH.D.

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Agreement to Serve as a Testifying Psychological Expert in Family Litigation

Date:

Prepared For:

In re:

Thank you for inquiring about my availability to serve as an expert in extant litigation. This document (“Service Agreement”) details the terms and conditions under which I will be available to provide this service. Please take the time to read this document through and to reach me at any time with questions or concerns. Upon return receipt of this initialed and signed document and retainer funds, as detailed below, I will be available to commence work in this matter.

1. I am a New Hampshire licensed psychologist. I have provided my *curriculum vita* under separate cover. Please feel free to learn more about myself and my practice including my work in the Courts at www.FamilyLawConsulting.org.
2. My work as a psychologist in any role is constrained by state and federal laws, the ethics promulgated by the American Psychological Association (APA), and the oversight of each state’s respective licensing board.
3. I enter family law and child protection matters in a number of distinct and mutually exclusive roles. Consulting to counsel and providing testimony intended to educate the Court is one of these roles. Across roles, across jurisdictions, and regardless of who has hired me, I advocate for the well-being of children.
4. You have advised that you are seeking a psychologist with expertise in the dynamics of conflicted, separated, and divorcing/divorced families, the ethics, standards, guidelines, and best practices associated with court-involved therapies, and related areas of child and family development. This work may involve review other professionals’ work product.
5. Working as your testifying expert, my job may include (a) review of existing documents generated by (for example) psychotherapists, educators, evaluators, and the Court; (b) review of relevant ethics, guidelines, standards, and best practices; (c) review of relevant empirical literature, case law, and similar resources, so as to (d) infer a fact pattern and (e) cast that fact pattern in the context of my experience, expertise, and knowledge of the science and thereby to (f) advise what combination of legal, educational, psychotherapeutic, and related interventions might best assist children to enjoy a healthy relationship with both (all) caregivers.

Please initial indicating your understanding and agreement

6. We have further agreed that my role may include assisting you to digest relevant documentation so as to prepare for deposition, direct, and cross examination. I have made clear that anything that you share in the course of these activities is vulnerable to disclosure if and when I am deposed or asked to testify.
7. Working as your testifying expert, I will NOT (a) collect new data not previously available to the present therapist(s), (b) meet with, interview, or assess any party to this matter, allowing for the social necessities of greetings if and when we come face-to-face, (c) and I will not be able to make recommendations to you or to the Court about the specific persons subject involved in this matter. My work in this capacity will not constitute and must not be construed as constituting a child custody, parenting capacity, parenting plan, or similar evaluation in and of itself and therefore cannot generate case-specific recommendations.
8. You have identified the persons involved in this matter by name. I do not believe that I have any prior or concurrent contact with these people and therefore have no conflict in the proposed role. I will alert you immediately and retain the discretion to withdraw from my role consistent with relevant ethical guidelines if I discover any such conflict moving forward.
9. Should my work in this matter involve contact of any sort with persons outside of the state of New Hampshire, I may be required to alert relevant state or provincial licensing bodies so as to obtain any necessary allowances and permissions relevant to this service. This may require that I disclose my relationship with you, the Court's case caption, and the Court in which this matter will be heard. Costs may be incurred in this process. My ability to provide this service may be limited or prohibited by such licensing bodies.
10. We have agreed to move forward as follows:
 - (a) Please read, initial, sign and return this document with funding (as below) to my attention promptly.
 - (b) We will meet via distance media to discuss the upcoming xxxx hearing.
 - (c) I will advise you which documents I might examine as part of a preliminary review. I can provide an encrypted link to facilitate secure communications at your request.
 - (d) Upon completion of this review, we will meet to discuss my impressions and your case theory and strategy in order to determine whether working together further serves your needs.
 - (e) Should my impressions NOT be congruent with your needs, we will terminate this relationship at that time.
 - (f) Should my impressions be congruent with your needs, we will agree on next steps including didactic testimony I might provide the court.
 - (g) I have advised that my schedule may be quite complicated and demanding. This includes inalterable travel plans. Please provide as much advance notice as possible of any scheduled events including hearings.
11. I reserve the right to decline any in-person encounter, appearance, or interaction in the interest of health at my sole discretion. I will instead make every effort when necessary and appropriate to appear via distance media (e.g., telephone or video conference platform). Please keep in mind time differences between states when scheduling all such appearances.
12. All services in this matter will be charged at xxx dollars (\$xxx.00) per hour.
 - (a) In the interest of preserving the integrity of the attorney-expert relationship, I strongly prefer that all payments are delivered by your office, rather than from your client.
 - (b) Payment made via PayPal (using the button at www.FamilyLawConsulting.org) or STRIPE (a comparable online payment service) will incur a three percent (3.00%) additional fee. Payment can also be made via paper check delivered via USPS to my office address, acknowledging that receipt may be delayed.
 - (c) I respectfully request immediate receipt of retainer funds in the amount xxx dollars (\$xxx.00) representing the first ten (10) hours to be invested in this matter. These funds will be depleted as

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- time is invested to a minimum of xxx dollars (\$xxx.00) at which time I will request that funds be replenished in an amount commensurate with anticipated activities.
- (d) I will alert you if and when additional funding is required. I will request that funds be replenished in an amount commensurate with anticipated work.
 - (e) Scheduled services (including deposition and Court appearances) must be cancelled at least seventy-two (72) hours in advance in order to avoid incurring full costs, except in cases of extreme weather, abrupt illness, injury, or inescapable technological failures.
 - (f) Should travel be necessary, all costs anticipated (e.g., hourly fees, travel, meals, lodging) must be paid in full upon request subject to review and reimbursement or requests for additional funds once travel is complete. I reserve the right to make travel plans (e.g., airfare, lodging, meals) that assure my comfort and accommodate my work.
 - (g) Full and complete provision of all requested funds is a necessary precondition for the provision of services.
 - (h) I will provide you with a detailed accounting of funds received and costs incurred upon request and upon conclusion of my involvement in this matter.
 - (i) I will return any funds held after all costs incurred are paid in full within thirty (30) days of the termination of my role in this matter.
13. Communications and discovery: My interaction will be directly with you and, at your invitation, with your co-counsel and office staff. I presume that our work is protected under the umbrella of attorney-client privilege. Nevertheless, it is my experience that legal professionals differ widely with regard to concerns about the discovery of an expert's communications. I will assume that all of our communications will be conducted via live voice transmission (e.g., telephone, Skype, FaceTime, Zoom) and that substantive written communications (excluding practical necessities such as scheduling) are to be eschewed via all media including, but not limited to e-mail and paper documents, **unless you agree otherwise by signing the Digital Communications consent at the conclusion of this document.**
14. Confidentiality and privilege: My records will remain confidential and privileged and considered subsidiary to your work product. My records will be maintained consistent with relevant ethics, guidelines, and standards. Nevertheless, my records may be disclosed under conditions including but not limited to,
- (a) The Court's discovery process;
 - (b) The Court's order;
 - (c) Administrative (e.g., licensing body) review;
 - (d) Mandated reporting ethics and laws in my sole discretion. **Please be advised that I take the position that safety supersedes all else.** On this basis, I interpret my mandated reporting responsibility to require that otherwise confidential and/or privileged information must be disclosed in a good faith effort to serve safety interests, e.g., by reporting to child protective services or alerting the police of a perceived imminent threat.
15. Upon delivery, my work product will belong to the employing attorney or the attorney's firm and may be disseminated thereafter at the attorney's or the attorney's firm's discretion. However, I retain the privilege to use some or all of my work product in a properly redacted form as best suits my professional activities and my efforts to support children's needs.
16. I understand that the Court may restrict discussion of this case and dissemination of case-related materials. As your testamentary expert I will abide by all such restrictions and endorse any necessary protections.
17. I retain the right to withdraw from this agreement at my sole discretion should I believe that my continuing service poses an ethical, legal, or practical conflict or threat of any kind.
18. This agreement remains in force for twelve (12) months from the date it is generated.

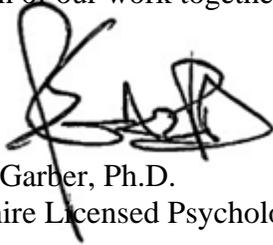
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- (a) Should the course of this work be interrupted for any reason such that it cannot be concluded within this period, I reserve the right to invalidate the data collected to that point as outdated, to collect, review and integrate new data, and/or to present new terms and limitations prerequisite to resumption or recommencement of the process.
- (b) Should your role be assumed by another attorney or another firm for any reason, I reserve the right to negotiate terms under which my role might continue in the employ of successor counsel.
- (c) Should your role be assumed by a *pro se* (self-represented) litigant, I will not be available to continue to provide this service.

19. Given the nature of this work, it is possible that you may not be pleased with my work product or may become otherwise dissatisfied with my services. By endorsing this statement, you agree that you will bring any concerns about my services to my attention directly in writing and invite my timely response in the first instance before seeking any further remedy.

In anticipation of our work together, I am,

Respectfully,



Benjamin D. Garber, Ph.D.
New Hampshire Licensed Psychologist

Statement of Understanding:

I have read the foregoing. I understand and accept the conditions under which Benjamin D. Garber, Ph.D., will serve as a testamentary psychological expert in my employ.

Please Print Your Name in Full

Your Day and Evening Phone Numbers

Please print your complete mailing address

City and State

Your Signature

Today's Date

Digital communications consent: Acknowledging that digital communications may not be confidential, that all such communications may be subject to discovery, and that digital communications can be misdirected, intercepted, and otherwise confounded, by signing below you are allowing Benjamin D. Garber, Ph.D., to communicate substantive matters relevant to his role as testamentary expert with you and your office via digital media:

Your Signature

Your email address