

Benjamin D. Garber PhD
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**Agreement to Serve as a Non-testifying
Psychological Consultant in Family Litigation**

Date:

[REDACTED]

Prepared For:

[REDACTED]

In re:

[REDACTED]

and

[REDACTED]

Thank you for inquiring about my availability to serve as an expert psychological consultant 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 previously forwarded my *curriculum vita* for your information. 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.

Please initial indicating your
understanding and agreement

3. I enter family law 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 represent the mother in the above-captioned child custody litigation. In this capacity, you are seeking a psychologist with expertise in the dynamics of high conflict families including but not limited to subject areas such as psychological testing and psychopathology, high conflict family functioning, alienation and estrangement, child abuse and neglect.
5. Working as your non-testifying consulting expert, my job may include:
 - (a) Receipt and review of relevant records including but not limited to paper files, digital and analogue audio, still images, and video files;
 - (b) Conferencing with you and, with your permission, with your co-counsel and/or others in your office so as to share impressions and recommendations, to prepare for testimony; and
 - (c) Assisting you to interpret and apply psychological data generated by other professionals including critique of the reliability, validity and meaning of those data.
 - (d) Assisting you in preparation of direct- and cross-examination in matters relevant to my expertise consistent with the fact pattern inferred from review of relevant records.
 - (e) Meet with your client to help him/her/them to understand the psychological matters at issues.
6. Working as your non-testifying consulting expert, my job will NOT include:
 - (a) Testifying, being deposed, generating reports for court consumption or otherwise making any statement about this matter.
 - (b) Being disclosed or otherwise identified in this role to opposing counsel.
 - (c) Coaching, preparing, or educating your client in any manner that might distort or invalidate his testimony.
7. You have identified the persons involved in this matter by name. I do not believe that I have any prior or contemporaneous relationship 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.
8. I am obligated to work within the parameters dictated by the agency or governmental body that permits professional psychological services in each state. This may require that I communicate with the relevant agency so as to obtain any necessary allowances and permissions relevant to this service. This may also require that I disclose my relationship with you, the court's case caption, and the court in which this matter will be heard. Any costs incurred in this process will be charged to this case. My ability to provide the proposed service may be limited by this agency. The conditions of this agreement must therefore be understood to be conditioned upon the permissions granted and the restrictions imposed by this agency.
9. We have agreed to move forward as follows:
 - (a) We have already spoken briefly by Zoom about my potential role and limited availability.
 - (b) Please read, initial, sign and return this document with funding (as below) to my attention promptly.
 - (c) I will make myself available within the limits of our mutual schedules to meet online or by phone to discuss this case as it evolves.
 - (d) I will review relevant documents as they become available (e.g., GAL report, psychological assessments).
 - (e) I will provide you with annotated notes, summaries, and/or reports about these materials at our mutual agreement.
 - (f) I will meet with you to assist in preparation of trial strategy, direct and cross examination.

Please initial indicating your
understanding and agreement

10. **Scheduling priorities and conflicts.** I have advised that my schedule is presently very challenging. I anticipate a number of activities that cannot be rescheduled, including travel abroad. Please keep me abreast of any scheduled activities (e.g., deposition, hearing, trial) with as much advance notice as possible so as to avoid possible conflicts. My availability and potential value participating in any scheduled hearing will depend upon our ability to collaborate efficiently in advance of that date.
11. **Health caveat:** I reserve the right to decline any in-person encounter, appearance, or interaction in the interest of health at my sole discretion. If I believe that my health is or could become compromised I will instead make every effort to appear via distance media (e.g., telephone or video conference platform) subject to the limitations of digital infrastructure.
12. **Document inventory and delivery:** I strongly prefer that your office keep a comprehensive inventory of all documents delivered to my attention and that all such documents be delivered in a searchable (that is, OCR-enabled) pdf format.
 - (a) I can provide you with an encrypted and confidential portal so as to maximize digital privacy when transmitting privileged materials.
 - (b) Comprehensive indexing using Bates (or comparable) pagination will facilitate review, communication, and limit costs incurred.
 - (c) Your effort to keep an index of all documents and resources provided for review will further limit my time and thereby costs incurred.
13. I rely on an administrative assistant (“Admin”) for some organizational and communication tasks. My Admin is subject to the terms of this agreement and an existing HIPAA-compliant Business Associate Agreement. My Admin’s time will be billed as “administrative” at fifty dollars (\$50.00) per hour.
14. My time engaged in any activity relevant to this service will be charged at [REDACTED] dollars (\$[REDACTED].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 can be made via paper check delivered via USPS to my office address, acknowledging that receipt may be delayed. **Payment made via credit card (e.g., PayPal using the button at www.FamilyLawConsulting.org) will incur a three percent (3.00%) additional fee.**
 - (c) As we agreed, I respectfully request immediate receipt of retainer funds in the amount of [REDACTED] representing the first fifteen (15) hours to be invested in this matter. These funds will be depleted as time is invested to a minimum of [REDACTED] at which time I will request that funds be replenished in an amount commensurate with anticipated activities.
 - (d) It is impossible to accurately anticipate how many hours (and thereby how much total cost) will be incurred in this process. It is not unusual for record review and collaboration to require more than forty (40) hours.
 - (e) Scheduled services must be cancelled at least seventy-two (72) hours in advance in order to avoid incurring full anticipated costs, except in cases of extreme weather, abrupt illness, injury, or inescapable technological failures.
 - (f) Should travel be necessary, all costs incurred (e.g., travel, meals, lodging) will be fully and promptly reimbursed at this hourly rate. This includes the use of a car service (e.g., Uber) in order to avoid traffic and parking and so as to use the time in transit more effectively.
 - (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.
15. **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.**

16. **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.
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 that it is generated.
- (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) Please be advised that if your client proceeds *pro se* (i.e., as a self-represented litigant) I will not be available 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.

Intentionally blank

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 non-testifying consulting 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 testifying expert with you and your office via digital media:

Your Signature

Your email address