

BENJAMIN D. GARBER, PH.D.

FAMILY LAW CONSULTING, PLLC

BDGARBERPHD@FAMILYLAWCONSULTING.ORG
603.314.8841 VOIP • 603.386.6083 FAX

Agreement to Serve as a Testifying Psychological Expert in Family Litigation

Date:

[REDACTED]

Prepared For:

[REDACTED]

In re:

[REDACTED]

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 legal 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 understanding, evaluating, and remediating the relationship dynamics of conflicted, separated, and divorcing/divorced families and related areas of child and family development.

Please initial indicating your
understanding and agreement

5. Working as your testifying expert, my job may include (a) review of records including but not limited to court records and professionals' files, notes, and work product, (b) review of relevant ethics, guidelines, standards, and best practices, (c) and review of relevant empirical literature, case law, and similar resources so as to (d) infer a fact pattern based on these materials, and thereby to (e) provide you and at your invitation provide the Court with impressions and recommendations relevant to this fact pattern. In this role I will make myself available within the limits of my schedule and subject to the terms of this agreement to be deposed and/or to testify in these matters.
6. Working as your testifying expert, I will NOT (a) assess, observe, or evaluate any individual or relationship, (b) meet with or interview 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 draw conclusions or make recommendations to you or to the Court about any particular individual or relationship. My work in this capacity will not constitute and must not be construed as constituting a psychometric, child custody, parenting capacity, parenting plan, or similar evaluation in and of itself and therefore cannot generate case-specific recommendations.
7. Should you decide NOT to disclose my role in this matter to the Court and agree NOT to have me testify in this matter, then I may be available to serve as your trial consultant rather than as your testifying expert. As your trial consultant I will provide the same services detailed above subject to the same limitations but will additionally be available to work with you to develop direct and cross examination of others and to meet with your client to review matters relevant to this process. Please be advised that once I accept the role of non-testifying trial consultant, I will not be able to resume service as a testifying expert.
8. You have identified the person(s) involved in this matter by name. I do not believe that I have any prior or concurrent contact with this person/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 persons who are physically 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. 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) You will read, initial, sign, and return this full document to my attention promptly.
 - (b) You will promptly deliver to my attention an agreed-upon portion of or the entire case file in OCR-enabled, pdf format preferably Bates stamped.
 - (c) I will review all documents received.
 - (d) We will confer via Zoom so as to communicate my impressions.
 - (e) At your request and as time permits I will prepare a summary report documenting my impressions.
 - (f) I will make myself available subject to the terms of this agreement and scheduling limitations to be deposed and/or testify as to my impressions.
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. 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 [REDACTED] per hour.
- (a) Please provide an initial retainer in the amount of [REDACTED] representing the first ten (10) hours of service.
 - (b) [REDACTED] of this retainer is not refundable. The remaining funds received and any subsequent funding may be refunded on a prorated basis as a function of time invested to date upon conclusion of my role in this matter.
 - (c) 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.
 - (d) Should travel be necessary, all costs incurred (e.g., travel, meals, lodging, comfort) will be paid in full above and beyond existing or requested retainer funds based on a good faith estimate. Any additional or unanticipated travel expenses must be fully and promptly reimbursed upon request.
 - (e) Time spent in travel portal-to-portal will be charged at [REDACTED] per hour or [REDACTED] per day, whichever is less.
 - (f) Full and complete provision of all requested funds is a necessary precondition for the provision of services.
 - (g) 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.
 - (h) 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 discoverable 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. I understand that the Court may restrict discussion of this case and dissemination of case-related materials. As your testifying expert I will abide by all such restrictions and endorse any necessary protections.
16. 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.
17. This agreement remains in force for twelve (12) months from the date 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

Please initial indicating your understanding and agreement

- 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 either withdraw from this matter entirely or to negotiate terms under which my role might continue in the employ of successor counsel at my sole discretion.
- (c) I regret that I cannot provide this service to a *pro se* litigant.
18. 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 testifying 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., and Family Law Consulting, PLLC, to communicate substantive matters relevant to his role as testifying expert with you and your office via digital media:

Your Signature

Your email address