

# Benjamin D. Garber PhD

## Family Law Consulting PLLC

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### Agreement to Serve as an *ad hoc* Non-testifying Psychological Consultant

Date:

[REDACTED]

Prepared For:

[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 I will be available to commence work in this matter.

1. I am a New Hampshire, U.S.A. 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](http://www.FamilyLawConsulting.org).
2. My work as a psychologist in any role is constrained by state, federal, and international 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 matters in a number of distinct and mutually exclusive roles. Providing *ad hoc* consultation to counsel is one of these roles. Across roles, across jurisdictions, across countries and regardless of who has hired me, I advocate for the well-being of children.
4. Working as your non-testifying consulting expert, my job may include consulting with you and, with your consent, with concerned others to:
  - (a) Interpret, apply, and or critique psychological data, principles, and methods as applied to family law;
  - (b) Receive and review records including but not limited to paper files, digital and analogue audio, still images, and video files so as to infer likely dynamics and recommend associated evaluations and interventions;
  - (c) Provide resources including guidelines, standards, ethics, best practice treatises, and publications relevant to psychological matters as they bear on family law practice;

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Please initial indicating your  
understanding and agreement

- (d) Draft, organize, critique, and run through direct and cross-examination questions.
  - (e) Attend hearings so as to debrief and advise regarding relevant dynamics, diagnoses, and continuing direct and/or cross-examination.
5. 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 or her testimony.
  - (d) Providing any direct clinical service to you, your staff, or your client.
6. **CONFLICT OF INTEREST:** I retain the discretion NOT to consult with you on any given matter in which I already have a conflict of interest. I will decline any future work opportunity in which you are involved or which I believe is likely to create a future conflict of interest for the duration of this agreement.
7. By providing this service I am working in your employ. I am not working for your client(s). If and when your professional relationship with a particular client ends, my relationship with that client will also end, i.e., I cannot thereafter consult with that client's successor counsel or with that client as a *pro se* litigant during the term of this Agreement.
8. **TERM:** This agreement will remain in force for six (6) months from the date that it is endorsed. This agreement can be renewed subject to our agreement to any change of terms. This agreement can be discontinued at any time by either of us with no advance notice via email notification, e.g., "*I am ending our ad hoc consulting relationship effective immediately.*" Upon termination or expiration of this Agreement, I will submit a final billing invoice to you. By endorsing this Agreement you agree to promptly pay in full all invoices thus received. Upon termination or expiration of this Agreement, I will not consider myself to have any future conflict working in matters in which you also appear.
9. **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., meeting, 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 event will depend in part on upon our ability to collaborate efficiently in advance of that date.
10. **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.
11. **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.

12. 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.
13. My time engaged in any and all activities relevant to this service will be charged at [REDACTED] per hour.
- (a) Given the *ad hoc* nature of this agreement, no advance retainer is due. I will timely submit billing statements in pdf format to your attention via email. By endorsing this Agreement you agree to promptly pay in full all invoices thus received.
  - (b) 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(s).
  - (c) 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](http://www.FamilyLawConsulting.org)) will incur a three percent (3.00%) additional fee.
  - (d) 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.
  - (e) Should travel be necessary, all costs incurred (e.g., travel, meals, lodging), I will invoice you for all costs incurred (e.g., transportation, lodging, meals, comfort). By endorsing this Agreement you agree to promptly pay in full all invoices thus received.
  - (f) Full and complete provision of all requested funds is a necessary precondition for the continuing 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.
14. **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.**
15. **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.
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. 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.

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Please initial indicating your  
understanding and agreement

In anticipation of our work together, I am,

Respectfully,

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

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**Statement of Understanding:**

I have read the foregoing. I understand and accept the conditions under which Benjamin D. Garber, Ph.D., will serve as an *ad hoc* 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