

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF _____

_____ X
In the Matter of a Proceeding
for Custody/Visitation

Petitioner,

-against-

Respondent.

**ORDER DIRECTING
FORENSIC EVALUATION**

File No:
Docket No(s):

Current Order of Protection: Yes No
If yes, Final _____ Temporary _____

Confidential Address for:

_____ (name)
_____ (name)
_____ (name)

_____ X
The Court having found that a forensic examination is necessary to assist in determining the parenting capacity of the parties, and in accordance with applicable laws and court rules,¹ and the following persons having appeared [check applicable box(es):

- petitioner(s): with without counsel;
- respondent(s): with without counsel;
- attorney(s) for the child(ren);
- other [specify]:

IT IS HEREBY ORDERED that _____, MD PhD LCSW LMSW whose office is located at _____, NY; Tel. #: _____, is appointed to conduct a forensic custody evaluation of the following:

<u>NAME</u>	<u>RELATIONSHIP TO SUBJECT CHILD(REN)</u>
_____	parent/other _____
_____	parent/other _____
_____	other _____
_____	subject child (DOB: ___/___/___)
_____	subject child (DOB: ___/___/___); and it is further

ORDERED THAT EACH PARTY SHALL CONTACT THE EVALUATOR ON OR BEFORE _____; and it is further

¹ See D.R.L. §240(1)(a-3); Exec. L. §575(3)(o); Rules of the Supreme Court, Appellate Division, First and Second Judicial Departments [22 NYCRR §§623.5 and 680.5].

ORDERED that the evaluator shall submit a written report to the Court **on or before** _____, addressing the following issues and to testify, if requested, regarding:

(1) the strengths, vulnerabilities and challenges impacting each party’s ability to parent, including his or her respective abilities to make safe and age-appropriate decisions for the child(ren), as well as his or her safe and responsible efforts to communicate with the other party regarding decision-making and to encourage the other party’s relationship with the child(ren);

(2) delineation of physical, psychological, intellectual, emotional, temperamental, developmental, and educational needs of the child(ren);

(3) the bond, relationship, and interaction between each of the child(ren) and each party;

(4) risk factors including, but not limited to, the presence of mental health and/or substance abuse symptomatology impacting parenting capacity; and indicia of domestic violence, coercive control, deleterious hostility, and/or entrenched conflict which may impact upon the decision-making and residential arrangements and/or access schedule, if any, to be ordered by the Court;

(5) other: _____

_____ ; and it is further

ORDERED that the evaluator [check applicable box]: shall shall not make a recommendation to the Court as to which party ultimately should have custody of the child(ren); and it is further

ORDERED that the evaluator may make recommendations for clinical services for any of the parties and the child(ren); and it is further

ORDERED that the evaluator shall serve exclusively in a forensic capacity to investigate and report to the Court on the issues delineated above. The forensic evaluator shall not act in any other capacity or role, even if requested by the parties, including, but not limited to: 1) therapist for a party or child(ren); 2) advisor regarding any legal or parenting issue; or 3) mediator, settlement facilitator, or parenting coordinator; and it is further

ORDERED that the appointed evaluator shall not delegate components of the evaluation to any individual without prior approval of the Court; and it is further

ORDERED that the evaluator shall reference the psychological and psychiatric research literature to provide empirical support for the evaluator’s clinical analysis including, but not limited to, any risk factors, cited in the final report; and it further

ORDERED that the evaluator shall include in his/her report a list of all documents reviewed

and all persons consulted or interviewed; and it is further

ORDERED that the evaluator, upon finding sufficient cause and obtaining prior written permission and an order from the Court, may engage any specialists or experts in a particular field to investigate and evaluate any special concerns that may arise during the course of the evaluation, and the fees for such evaluation, including an initial retainer, and subsequent fees, shall be shared in the same manner as hereinafter directed in this order, unless otherwise specified; and it is further

ORDERED that the evaluator, upon finding sufficient cause and obtaining prior written permission and an order from the Court, may refer the parties for forensic drug and/or alcohol testing, and the fees shall be paid by the person(s) undergoing the testing. The failure to timely submit to such testing, upon notice to the parties by the evaluator, may be considered by the evaluator in his or her evaluation; and it is further

ORDERED that the parties shall fully cooperate with the evaluator, and upon his or her request shall sign releases to permit the evaluator to speak with any physician, therapist, guidance counselor, and/or teacher involved with the child(ren) or any therapist, psycho-pharmacologist, facility personnel, or physician of any party whose input the evaluator believes would be helpful to conduct the evaluation; and it is further

ORDERED that upon the request of the evaluator the parties shall provide releases (subject to Court determination if requested by any party or attorney(s) for the child(ren)), to enable the evaluator to obtain written treatment, medical, pharmaceutical, or education records for any party or the child(ren) that the evaluator believes would be relevant in conducting the evaluations; and it is further

ORDERED that counsel shall not have any contact with the evaluator except regarding scheduling, payment issues, and document submission, as provided in this order; and it is further

ORDERED that any and all documents, papers or other material including, but not limited to, mental health records of any party or child(ren) furnished to the forensic evaluator by the parties or counsel shall be copied and forwarded to counsel for any party and the attorney(s) for the child(ren) within five (5) business days of receipt and to a self-represented party **only** upon Court order; all address and other identifying information of any party who has been granted an address confidentiality order shall be redacted prior to distribution; and it is further

ORDERED that payment for the forensic evaluation shall be accordance with one of the following sections (**I, II or III**):

I. [Applicable to private pay cases]:

ORDERED that the Court having made appropriate inquiry into the financial status of the parties, _____ (name) shall pay _____% of the evaluator's fees, and _____(name), shall pay _____% of the evaluator's fees, [add additional parties if included] including an initial retainer in the sum of \$_____, subject to reallocation at trial; and it is further

ORDERED that the cap on the forensic evaluation is not to exceed a rate of \$_____ per hour, to a maximum of \$_____. However, if the evaluator anticipates that the cost of the evaluation and report (not including testimony) is likely to exceed the cap set by the Court, then he/she shall make a supplemental request on notice for additional compensation prior to the expenditure of time, subject to reallocation at trial; and it is further

ORDERED that no less often than every sixty days from the date of this order the evaluator shall send each party, his or her counsel and the attorney(s) for the children a detailed bill of services rendered.

If the evaluator requires the parties to enter into a written retainer agreement it shall not contain any material terms that conflict with the provisions of this order.

A party who fails to comply with the provisions of this order relating to payment of the fees of the evaluator may be subject to judicial sanction.

II. [Applicable to cases where all parties are indigent]:

ORDERED that the Court having made appropriate inquiry into the financial status of the parties, and being satisfied that the parties are financially unable to pay the costs of the forensic evaluation, compensation for the evaluation and any Court appearances in connection therewith, shall be paid proportionately to the ratio of adults seen and evaluated (County Law §722-c and/or by the Institutional Provider) and the child(ren) seen and evaluated (Judiciary Law §35 and/or by the Institutional Provider) at a rate not to exceed \$_____ per hour to a maximum amount of \$_____.

The Court has made a finding of extraordinary circumstances to warrant compensation to the forensic evaluator in excess of the statutory maximum of \$1,000 (County Law §722-c and Judiciary Law §35).

If the evaluator anticipates that the cost of the evaluation and report (not including testimony) is likely to exceed the cap set by the Court, then he/she shall make a supplemental request to the Court for additional compensation prior to the expenditure of time. Such application shall be on notice to counsel and any unrepresented party.

In this case, the Court is directing that a total of _____ adults be evaluated and a total of _____ child(ren) be evaluated, and therefore payment shall be _____% pursuant to the County Law and/or _____% to be paid by the Institutional Provider, _____, representing the adult(s) and _____% pursuant to the Judiciary Law, and/or _____% to be paid by the Institutional Provider, _____, representing the child(ren).

III. [Applicable to mixed indigent/private pay cases]:

ORDERED that the Court having made appropriate inquiry into the financial status of the

parties, and having found that _____ (name) proportionate share of the evaluator's fees, including those apportioned to the child(ren), is _____ % and _____ (name) proportionate share of the evaluator's fees is _____ % , including those fees apportioned to the child(ren), [add additional parties if included in the evaluation] including an initial retainer in the sum of \$ _____, subject to reallocation at trial; and it is further

ORDERED that the Court having determined that one (1) or more of the parties is unable to pay his/her proportionate share of the costs of the forensic evaluation; therefore it is further

ORDERED that the cap on the forensic evaluation ordered is not to exceed a rate of \$ _____ per hour, to a maximum of \$ _____. The Court is directing that _____ % or \$ _____ of _____ (name) proportionate share shall be paid by that party and that _____ % or \$ _____ of _____ (name) proportionate share shall be paid by that party and that the remainder shall be paid pursuant to County Law §722-c or by the Institutional Provider.

If the evaluator anticipates that the cost of the evaluation and report (not including testimony) is likely to exceed the cap set by the Court or the statutory maximum, then he/she shall make a supplemental request to the Court for additional compensation prior to the expenditure of time. Such application shall be on notice to counsel and any unrepresented party. Only upon a written showing of extraordinary circumstances will compensation be awarded in excess of the statutory maximum.

[Applicable where an application to exceed the statutory maximum has been made; check box if applicable]: The Court has made a finding of extraordinary circumstances to warrant compensation to the forensic evaluator in excess of the statutory maximum of \$1,000;

[Applicable to cases where a portion is to be paid pursuant County Law §722-c; check box if applicable]: The Court has made a finding of extraordinary circumstances to warrant compensation to the forensic evaluator in excess of the statutory maximum of \$1,000.

[Applicable to cases where a portion is to be paid by the Attorney for the Child program; check box if applicable]: The Court having found that neither party is able to pay the full cost of having the child/children seen and evaluated, it is **ORDERED** the Attorney for the Child's share is to be paid by [check applicable box: Judiciary Law §35 institutional provider pursuant to contract; and it is further

ORDERED that no less often than every sixty days from the date of this order the evaluator shall send each party, his or her counsel and the attorney(s) for the children/Institutional Provider a detailed bill of services rendered.

A party who fails to comply with the provisions of this order relating to payment of the fees of the evaluator may be subject to judicial sanction; and it is further.

ORDERED that the parties shall pay the evaluator's retainer, if any, within ten (10) business days of the date of this order; and it is further

ORDERED that the report shall be submitted to the Court, but shall not reviewed by the Court, absent stipulation of counsel, admission into evidence or upon Court order on motion of any party. The Court shall provide the report to counsel for the parties and for the child(ren). The report shall be shown to the parties; copies may be provided to the parties, including a self-represented party **only** upon Court order, subject to an affidavit of party and a protective order, and it is further

ORDERED that upon receipt of a discovery request pursuant to Article 31 of the Civil Practice Law and Rules, after submission of the evaluator’s report, a copy of the evaluator’s underlying data and notes utilized in preparation of the report shall be provided to the Court (but shall not be reviewed by the Court, absent stipulation of counsel, admission into evidence or upon Court order on motion of any party) and shall be made available to all counsel and **only** upon Court order shall be made available to a self-represented party, subject to a protective order; and it is further

ORDERED that the evaluator’s report, data, notes and any material provided to the evaluator shall not be re-released, duplicated, copied, photographed, transmitted, disseminated (including on social media) or released to any person or agency by the evaluator, counsel for the parties, attorney for the child(ren) or party without a Court order.

Dated: _____,
_____, New York

ENTER:

HON.
Judge of the Family Court

TO: