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**APPOINTMENT**

1. \_\_\_\_\_ is appointed the court's expert, pursuant to Evidence Code Section 730 and California Rule of Court 5.220 for the purpose of conducting a custody evaluation in this proceeding. The address and telephone number of the evaluator is:

**SCOPE OF EVALUATION**

2. The evaluator will investigate and advise the Court as to the health, safety, welfare and best interests of the parties' child(ren) in connection with the disputed custody and visitation issues in this matter.

- This will be a full evaluation, investigation and assessment, intended to provide the Court with a comprehensive examination of the health, safety, welfare and best interests of the child(ren). The major issues to be addressed in the evaluation are:

***Or,***

- This will be a Brief Focused Assessment (BFA), investigation and assessment. See Attachment A for specific issues to be addressed by BFA.

3. The evaluator will make recommendations based on what he or she perceives to be in the best interests of the child(ren); what is necessary to promote the development, emotional adjustment and psychological well being of the child(ren).
4. The evaluator has quasi-judicial immunity.

**EVALUATOR'S OBLIGATIONS**

5. Except as limited by the court's order for a Brief Focused Assessment, the evaluator will use data and information that will allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding:
  - a. each child's developmental needs;
  - b. the quality of attachment to each parent and that parent's social environment;
  - c. the child's reactions to the separation, divorce or parental conflict.
6. This process may include, but is not limited to:
  - a. reviewing pertinent documents related to custody, including local police records;
  - b. observing parent-child interaction unless contraindicated to protect the best

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interest of the child;

- c. interviewing parents together, individually or both together and individually unless it is contraindicated, to assess each parent's:
  - (i) capacity for setting age-appropriate limits and for understanding and responding to the child's needs;
  - (ii) history of involvement in caring for the child;
  - (iii) methods for working toward resolution of the child custody conflict;
  - (iv) history of child abuse, domestic violence, substance abuse, and psychiatric illness; and
  - (v) psychological and social functioning
- d. conducting age-appropriate interviews;
- e. observing the child(ren) with each parent, stepparent, siblings, and step and half siblings together, separately or in whatever way the evaluator thinks best to accomplish the goal of the evaluation;
- f. collecting relevant corroborating information or documents as permitted by law;
- g. consulting with other experts for the purposes of obtaining feedback, case review or to obtain access to specific expertise. Any consultant used by the evaluator is bound to maintain confidentiality regarding the information learned;
- h. providing the child(ren) with an age appropriate explanation of the evaluation process, and advising them that statements made by them to the evaluator may not be confidential: that it is possible that their parents may be informed of their statements.

### **PARTIES' COOPERATION WITH EVALUATOR**

7. The court orders the parties to follow all requests made of them by the evaluator so that the evaluator can conduct the evaluation, as required by law. Each party is required to complete any tasks required of him or her by the evaluator in a timely manner, as the evaluator may indicate. Specifically, each party shall:
  - a. contact the evaluator named above within ten (10) court days of this order being filed with the court, to set an initial appointment time, to pay the evaluator's fees, and to sign any papers required of the evaluator to begin the custody evaluation process. Both parties will make the scheduling of appointments with the evaluator a priority and will set appointments with the evaluator on a time schedule requested by the evaluator.
  - b. participate in such testing and interviews as directed by the evaluator;
  - c. participate in psychological testing with whomever the evaluator recommends;
  - d. participate in an assessment by an independent specialist such as a substance abuse specialist, a neuropsychologist or other specialist as recommended by the evaluator;
  - e. allow the evaluator the ability to interview members of the immediate and/or

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extended family of both parents at the evaluator's sole discretion;

- f. allow the evaluator the ability to interview any and all other persons whom the evaluator deems to have information relevant to the scope of the evaluation;
  - g. allow the evaluator the ability to interview any service providers who have worked, or had a relationship with, either of the parents or the child;
  - h. determine the protocol of all interviews and sessions to be conducted by the evaluator;
  - i. sign any and all releases for records and information requested by the evaluator so that the evaluator has access to all information relevant to the scope of the evaluation, such as documents and information from outside sources, including, but not limited to: psychiatrists, mediators, psychologists, social workers, teachers and school personnel, physicians, police departments, hospitals and child protection workers. This includes past records as well as reports from professionals who may be involved with any of the parties at the time of litigation, and includes records and information regarding both parties, as well as their child(ren).
8. The parties are ordered to provide the evaluator copies of all pleadings, orders and correspondence that relate to the issues being evaluated, including any document requested by the evaluator. The parties may submit a list of people that they believe should be interviewed by the evaluator. The evaluator may, or may not, interview any of the people suggested by the parties, at his or her sole discretion. Any communications or documents provided to the evaluator must also be provided simultaneously to the opposing party.

**PARTIES' RESPONSIBILITY FOR EVALUATOR FEES**

9. The court orders the parties to pay the evaluator's fees and costs as follows, unless there is a subsequent explicit order to the contrary:

\_\_\_\_\_ will pay \_\_\_\_\_% of the evaluator's fees and expenses, including the advance deposit and \_\_\_\_\_ will pay \_\_\_\_\_% of the evaluator's fees and expenses, including the advance deposit. The deposit will be paid by the parties prior to the onset of the evaluation.

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**Or,**

The court shall pay the fees and costs associated with this custody evaluation in an amount not to exceed \$\_\_\_\_\_ The parties are ordered to reimburse the court, as follows:

until a total of \$ \_\_\_\_\_ will pay \$ \_\_\_\_\_ on the 1<sup>st</sup> day of each month has been paid.

until a total of \$ \_\_\_\_\_ will pay \$ \_\_\_\_\_ on the 1<sup>st</sup> day of each month has been paid.

Payments must be made payable to the San Francisco Superior Court and mailed to 400 McAllister Street, Suite 402, San Francisco, CA 94102 ATTN: Custody evaluation fees. The check or money order must have the case name and number and the words "custody evaluation fees" written on the check or money order.

- 10. Each parent must sign any fee agreement required by the evaluator.
- 11. The San Francisco Superior Court reserves jurisdiction to allocate the costs of testimony and post-evaluation services provided by the evaluator.
- 12. Any party requiring the evaluator to testify at a deposition, trial or hearing must first pay the evaluator an additional retainer to cover his or her time in preparing for, and appearing at, the deposition and / or the court hearing.

**CUSTODY EVALUATION REPORT**

- 13. The opinions formed by the evaluator during the evaluation are not confidential. If the evaluator determines that sharing information discovered during the evaluation process is in the best interests of the child(ren), the evaluator may share the information with the court, either or both attorneys, either or both parents, any therapists involved with the parties and/or child(ren), or any other party at the sole discretion of the evaluator, as may be appropriate to protect the best interests of the minor(s).
- 14. The evaluator will take such steps as are necessary to protect the child(ren)'s therapeutic privilege, including to decline to provide any party or counsel with information disclosed by the child(ren) or the child(ren)'s therapist, which would otherwise be privileged. The evaluator will advise the court whether a minor child's therapeutic privilege should be waived by the court for purposes of obtaining the testimony of any mental health professional treating a minor child of the parties.

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In the event that any privileged information or testimony is required by the court, such information or testimony shall be provided *in camera* outside the presence of the parties. Counsel for the parties are prohibited from disclosing the details of such information or testimony. The evaluator will not release any raw test data and notes from psychological testing except to a qualified psychologist named by the party requesting the information.

15. The evaluator will prepare a confidential written report in compliance with California Rule of Court 5.220. The report must:

- a. Summarize the data gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;
- b. Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;
- c. Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interests of the child;
- d. Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendation to the court regarding a parenting plan;
- e. The recommendation portion of the evaluation will be set forth in a separate attachment or section of the report.
- f. The evaluator may also include a recommendation to the court for the appointment of counsel for the child(ren).

16. In those cases where a significant amount of time has passed between the completion of the evaluator's report and the trial date, the evaluator may conduct a brief re-evaluation. A re-evaluation allows the evaluator to present the parties and the court with any developments that may have taken place since the original report by conducting appropriate interviews and reviewing documents. The re-evaluation ensures that everyone has the most recent information related to the issues. A brief evaluation may take place when at least one parent agrees to participate, or as the court may order. The parties must pre-pay the costs estimated by the evaluator for any re-evaluation

17. The court will assume that the original evaluator should be appointed to provide the court with any needed follow-up evaluations if the evaluator is available and willing to perform such updates. If a party believes that the evaluator is unqualified to conduct the re-evaluation for any reason, including being biased, that issue should be raised and determined either during the hearing following the initial evaluation, or, if there was no hearing after the original evaluation, through a noticed motion to resolve the

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issue.

**COMMUNICATION WITH THE EVALUATOR**

- 18. Absent a stipulation or a specific authorization of the court to the contrary, attorneys may not communicate directly with the evaluator on an ex parte basis except to schedule an appointment or as is allowed pursuant to Family Code Section 216.
- 19. If one attorney refuses an invitation to participate in a joint conference, that attorney's refusal will be an implied waiver of the ex parte communication prohibition and the evaluator may meet with the other attorney(s).
- 20. By signing their names immediately below this paragraph, the parties agree that the evaluator may, at his or her sole discretion, communicate with any attorney on an ex parte basis. By signing below, each party understands that he or she is waiving rights under Family Code Section 216.

\_\_\_\_\_  
, Moving Party

\_\_\_\_\_  
, Responding Party

\_\_\_\_\_  
Attorney for Moving Party

\_\_\_\_\_  
Attorney for Responding Party

\_\_\_\_\_  
Attorney for Minor(s)

**POST EVALUATION PROCEDURES**

- 21. The evaluator may meet with either or both of the parties, or with all attorneys to discuss the results of the evaluation.
- 22. No person who has access to, or receives a copy of, the evaluation or any part of that report, may distribute it without prior court order. Nothing in the report can be disclosed to any other person without prior court approval. Use of the report is limited to the pending litigation. The report shall not be filed with the court as an independent document or as an attachment to any other document filed with the court. In no event shall any of the information contained in the report, or access to the report, be given to any child who is the subject of the report.

**SUBSTANTIAL SANCTIONS MAY BE IMPOSED BY THE COURT FOR INAPPROPRIATE USE OF THE EVALUATION REPORT OR ANY INFORMATION CONTAINED IN IT.**

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23. The attorneys and parties are ordered to meet and confer within fifteen (15) court days of having received, or had the opportunity to read, the evaluation.
24. If, after having met and conferred, the parties are unable to resolve all of the outstanding issues, the coordinating mediator will, in conjunction with the evaluator and the court, schedule either a mediation, settlement conference, status conference and/or a trial. Unless otherwise ordered by the court, the parties will attend any post evaluation procedure scheduled by the court or the coordinating mediator. The attorneys, parties, coordinating mediator and the evaluator may each be included in these procedures, as the court and/or the coordinating mediator may decide.
25. Fees for the evaluator's participation in any post evaluation processes must be paid by the parties prior to the evaluator's scheduled appearance as set forth in this Custody Order and/or the evaluator's fee agreement.

#### **EVALUATOR TESTIMONY**

26. The evaluator serves under the court's appointment and, if required to testify by either party, will testify as the court's witness with the understanding that the evaluator will make recommendations that address the best interests of the child(ren).
27. Court appointed evaluators may not be deposed without a prior court order.

#### **MISCELLANEOUS**

28. The parties are ordered not to discuss their respective positions on child custody issues, or the contents of the evaluator's written report, with the minor child(ren).
29. Each party is ordered to immediately carry out the terms of this order. To ensure timely compliance, either party may make an ex parte application to the court to compel compliance with the terms of this Order. The Court has the authority to impose monetary sanctions on any party who fails to follow any part of this court order.
30. In the event that enforcement proceedings become necessary to enforce any provision of this order, the non-prevailing party shall pay attorney's fees and costs as may be incurred.
31. The San Francisco Superior Court reserves jurisdiction regarding any dispute regarding fees or any other provision of this order. Jurisdiction is also reserved to San Francisco Superior Court to determine the allocation and characterization of any funds advanced/paid by either parent and the merits of any dispute over such fees.

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32. This matter shall be set for a review hearing on \_\_\_\_\_ at \_\_\_\_\_ in  
Dept. \_\_\_\_\_ to ensure that each party is complying with the terms of this Order and  
a status review hearing on \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_

We stipulate to the appointment of a custody evaluator.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Moving Party

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Moving Party

Dated: \_\_\_\_\_

\_\_\_\_\_  
Responding Party

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Responding Party

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Minor(s)



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Acceptance of Appointment

I accept this appointment under the terms set forth above. I hereby certify, under penalty of perjury, that I am familiar with the requirements of California Rules of Court 5.220 and 5.225 and Family Code Section 3110.5 and that I meet the education, experience and training requirements required by them. I further certify that I have a current license in good standing as required by the Rules of Court and family law statute referenced above.

Dated: \_\_\_\_\_, \_\_\_\_\_  
Evaluator

Based on the foregoing and good cause appearing

IT IS SO ORDERED.

Dated: \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**Brief Focused Assessment Attachment A is incorporated into this order by reference.**

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**ORDER ALLOWING EVALUATOR TO HAVE EX PARTE COMMUNICATION WITH MINOR'S COUNSEL**

Minor's counsel has been appointed in this matter pursuant to Family Code Section 3150. Pursuant to Family Code Section 3151, minor's counsel has been charged with representing the child(ren)'s best interest. In order for the child custody evaluator to formulate his or her recommendations as to what is in the child(ren)'s best interest, he or she requires access to any facts and information gathered by minor's counsel that may bear on the best interest of the child(ren). The court finds that it is in the child(ren)'s best interest that the evaluator be permitted to have ex parte communication with minor's counsel.

Though **not required by Family Code Section 216**, the parties, by signing below, intend to indicate their agreement to allowing ex parte communication between the evaluator and minor's counsel at any time during, and subsequent to, the evaluation.

Dated: \_\_\_\_\_  
\_\_\_\_\_ Moving Party

Dated: \_\_\_\_\_  
\_\_\_\_\_ Attorney for Moving Party

Dated: \_\_\_\_\_  
\_\_\_\_\_ Responding Party

Dated: \_\_\_\_\_  
\_\_\_\_\_ Attorney for Responding Party

**GOOD CAUSE APPEARING, THE COURT AUTHORIZES EX PARTE COMMUNICATION BETWEEN THE EVALUATOR AND MINOR'S COUNSEL**

Dated: \_\_\_\_\_  
\_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

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730 CUSTODY EVALUATION ORDER  
ATTACHMENT A

**Referral Form for Brief Focused Assessment (BFA)**

**Part 1: Issues to be investigated and assessed<sup>1</sup>**

(Check **ONLY ONE** issue below to be addressed and identify the parent(s) and/or child(ren) being assessed regarding that issue.)

- Drug and/or alcohol abuse assessment of
- School assignment
- Modification to parenting plan, e.g. change in time share
- Modification to parenting plan to accommodate adolescent needs
- Psychological testing of
- Assessment of attachment or bonding of
- Evaluation of Special Needs Child
- Health status and needs of the child being met
- Education status and needs of the child being met
- Limitations on joint legal custody
- Physical health of
- Other: **Must** be reviewed and approved by the Court

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<sup>1</sup> The following issues are **NOT** appropriate for a Brief Focused Assessment:

Cases involving sexual abuse, physical abuse of a child, reunification of parent and child, high conflict couples, parent relocation (Move Aways), and alienation allegations. BFAs are generally inappropriate when there are allegations of domestic violence or when the involved children were once court dependents through the juvenile dependency system.

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**Part 2: The elements of this Brief Focused Assessment *may* include, but are not limited to, the following:**

- Individual and/or conjoint parent interviews
- Individual child interviews, where developmentally appropriate
- Parent-child observations
- Telephone interviews with relevant neutral collateral parties (e.g. pediatricians, teachers, therapists, religious practitioners, etc.)
- Review of orders and relevant records
- Other investigation, as may be determined by the appointed evaluator.

**Part 3: Evaluator's obligations pursuant to this Brief Assessment Order:**

The evaluator's obligations to carry out specific investigations and other duties, otherwise required, per numbers 5 and 6 of this 730 Order, are modified pursuant to this Court's order for a Brief Focused Assessment, as indicated in Part 2 above.