

CAUSE NO. \_\_\_\_\_

IN THE INTEREST OF:

IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT

\_\_\_\_\_

A CHILD/CHILDREN

\_\_\_\_\_ COUNTY, TEXAS

**ORDER FOR PREPARATION OF CHILD CUSTODY EVALUATION**

On \_\_\_\_\_, the court considered the Motion for Child Custody Evaluation brought by \_\_\_\_\_. The court finds that the Motion should be granted as follows:

1. IT IS ORDERED that Susan Fletcher, Ph.D., Licensed Psychologist, Frisco, TX, (972) 612-1188 (www.fletcherphd.com), is appointed as the child custody evaluator (the "Evaluator") to conduct a child custody evaluation and prepare a written report containing opinions and recommendations to the Court regarding the parties and the child(ren) in question and, without limitation, on the issues set forth below.

The Court finds that the Evaluator is qualified to conduct a child custody evaluation pursuant to section 107.104 of the Texas Family Code. IT IS FURTHER ORDERED that the child custody evaluator shall be in compliance with section 107.108 of the Texas Family Code.

After the order is signed, the attorneys are to provide a copy of this order to the Evaluator. The parties are each ORDERED to call the office of the Evaluator within seven business days of the signing of the order to provide their names, addresses, telephone numbers and other contact information. The parties are each ORDERED to cooperate in scheduling and attending all subsequent appointments necessary to complete the evaluations ordered herein.

IT IS ORDERED that any person who participates in the child custody evaluation is not a patient as that term is defined by section 611.001(1), Texas Health and Safety Code.

2. IT IS ORDERED that the Evaluator is appointed to conduct a child custody evaluation and prepare a report regarding the circumstances and condition of a child the subject of this suit, the circumstances and condition of any party to this suit and the residence of any person requesting conservatorship of, possession of, or access to a child(ren) the subject of this suit, specifically:

Petitioner Name:	Respondent Name:	Intervenor (if any):
Child(ren)'s names and dates of birth:		

3. IT IS ORDERED that all fees charged by the Evaluator related to the evaluation and preparing the report shall be divided between the parties as follows: \_\_\_\_\_% Petitioner, (Petitioner's name)

and \_\_\_\_\_% Respondent, (Respondent's name) subject to the Court's decision to reallocate such fees at the time of hearing/trial. The parties are ORDERED to pay their respective portions of these fees at such times and in such amounts as the Evaluator may direct. The cost of preparing the child custody evaluation does not include the cost of the Evaluator testifying at trial, the payment of which is discussed herein below.

4. IT IS ORDERED that the welfare and best interests of the child(ren) shall be the principal criteria governing the child custody evaluation. To assess those interests the Evaluator shall identify and evaluate each parent's skills and abilities as they relate to the child(ren)'s social, emotional and physical development, the family's interaction, each parent's strengths and weaknesses, and how these factors impact the children. The Evaluator is appointed to conduct interviews of the parents, children, and other persons who may provide information relevant to the Court's questions; administer appropriate psychological testing; review relevant records; and utilize other information gathering procedures of the type reasonably relied upon by experts in her field who conduct evaluations of the sort ordered herein to reach conclusions, if she can, to assist the Court.

In this child custody evaluation, the term, "child interview," as referenced in Texas Family Code Section 107.109 (c)(2), shall refer to any individual interview of a minor child and shall not be construed as applying to other elements of the evaluation in which the minor child is a participant, such as but not limited to the parent-child interviews or any observations of the children or parents that are part of this child custody evaluation.

The parties to this action agree that an audiovisual recording shall be created of each interview the Evaluator conducts with a child who is the subject of a suit seeking conservatorship of, possession of, or access to the child. As referenced in Texas Family Code Section 107.112(b-1), a recording created under this subsection is confidential and may not be released after the completion of the suit in which the Evaluator conducted the evaluation, except by court order for good cause shown.

The Evaluator shall render opinions to aid the Court in determining answers to the following specific questions:

- a. Should Petitioner and Respondent be appointed Joint Managing Conservators of the child(ren)?
- b. Which parent should have the exclusive right to determine the primary residence of the child(ren)?
- c. What periods of parenting time (possession and access) should be ordered for the child(ren) with each parent?
- d. How do each of the parents meet the emotional needs of the child and is one parent better able to do so than the other?
- e. How do each of the parents meet the physical needs of the child and is one parent better able

to do so than the other?

f. Should either parent's possession be supervised?

g. Does either parent present a physical or emotional danger to the child?

5. IT IS ORDERED that the court-appointed Evaluator may make any and all other recommendations and/or referrals regarding what the Evaluator believes will aid the Court in determining the best interest of the children.

6. IT IS ORDERED that the Evaluator shall comply with each of the provisions in Texas Family Code Chapter 107, Subchapter D, regarding child custody evaluations.

7. IT IS ORDERED that pursuant to Texas Family Code §107.109 the Evaluator shall complete each of the following "basic elements" of a Child Custody Evaluation or else refrain from offering opinions regarding conservatorship, possession, or access:

- a. a personal interview with each party to the suit;
- b. interviews, conducted in a developmentally appropriate manner, with each child at issue in the suit during a period of possession of each party to the suit but outside the presence of the party;
- c. observation of each child at issue in the suit, in the presence of each party to the suit, including, as appropriate, during supervised visitation, unless contact between a party and a child is prohibited by court order or the Evaluator has good cause for not conducting the observation and states the good cause in writing provided to the parties to the suit before the completion of the evaluation;
- d. an observation and, if the child is at least four years old, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate;
- e. obtaining information from relevant collateral sources, including review of relevant school records, relevant physical and mental health records of each party to the suit and each child who is subject to the suit, relevant records of the Department of Family and Protective Services, criminal history information relating to each child who is subject of the suit, each party to the suit, and each person who lives with a party to the suit, and any other collateral source that may have relevant information;
- f. evaluation of the home environment of each party seeking conservatorship of a child who is the subject of the suit or seeking possession of or access to the child;
- g. for each individual residing in a residence subject to the child custody evaluation, consideration of any criminal history information and any contact with the Department of Family and Protective Services or a law enforcement agency regarding abuse or neglect;
- h. assessment of the relationship between each child at issue in the suit and each party seeking possession of or access to the child.

8. IT IS ORDERED that the Evaluator shall discuss in the report the following “additional elements” set forth in Texas Family Code §107.109 or explain in the report the reason that any element listed therein was not completed:

- a. balanced interviews and observations of each child who is the subject of the suit so that a child who is interviewed or observed while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;
- b. an interview of each individual, including a child who is at least four years of age, residing on a full-time or part-time time basis in a residence subject to the child custody evaluation;
- c. observation of a child who is the subject of the suit with each adult who lives in a residence that is the subject of the evaluation;
- d. an interview, if the child is at least four years of age, and observation of a child who is not the subject of the suit but who lives on a full-time or part-time basis in a residence that is the subject of the evaluation;
- e. psychometric testing, if necessary, consistent with Texas Family Code §107.110.

9. IT IS ORDERED that the Evaluator have the following access and authority during the preparation of the child custody evaluation and report:

- a. With the exception of mediation records or records protected by the attorney-client privilege, the parties are ORDERED to make available to the Evaluator, in a prompt and timely manner, all records, public or private, that bear upon the physical health, mental health, criminal history, or any other collateral sources of information the Evaluator requests, related to any of the parties and other individuals residing in a residence subject to the child custody evaluation. This includes, but is not limited to medical and dental records, school records, daycare provider records, arrest records and Child Protective Services records.
- b. Texas Family Code 107.1111 provides that a child custody evaluator appointed by a court is entitled to obtain records that relate to any person residing in a residence subject to a child custody evaluation from law enforcement authority, criminal justice agencies, juvenile justice agencies, community supervision and corrections departments, and any other governmental entity.
- c. Each party is ORDERED to execute any and all authorizations and releases necessary, including but not limited to HIPAA-compliant releases, to allow the appointed Evaluator to obtain information about the children, the parties, or other caretakers in order to make a complete and thorough evaluation. IT IS ALSO ORDERED that any health information protected by HIPAA is only to be used in connection with this litigation and the parties, their counsel, the employees of their counsel, and their respective agents, are prohibited from using or disclosing health information protected by HIPAA for any other purpose other than in connection with this litigation.
- d. Each party is ORDERED to cooperate and comply with all requests of the Evaluator for in-

person or telehealth interviews or requests for information and documents during the process of conducting the child custody evaluation. The parties are further ORDERED to cooperate and comply with all requests of the Evaluator for the cooperation of each individual residing in a residence subject to the evaluation as outlined in Texas Family Code §107.109.

- e. Each party is ORDERED to make the child(ren) available to the Evaluator for interview and observation as directed by the Evaluator.

10. IT IS ORDERED that the court-appointed child custody Evaluator shall utilize procedures and protocols, and rely upon such facts and data, which are the type reasonably relied upon by other forensic experts in this field, including but not limited to examinations, interviews, testing as deemed necessary by the Evaluator, records, and other relevant documents and tangible items.

11. IT IS ORDERED that all materials provided to the court-appointed child custody Evaluator by either party's counsel or by a party who represents themselves shall concurrently be provided to all other counsel of record, and any party who represents themselves, if such documents have not been previously produced.

12. IT IS ORDERED that any party who resides outside of the State of Texas shall be initially interviewed by the Evaluator in the State of Texas.

13. IT IS ORDERED that the Evaluator shall prepare a written report pursuant to this order, any additional order of the Court, and section 107.113 of the Texas Family Code, containing the evaluator's findings, opinions, recommendations, and answers to specific questions. The child custody evaluation shall be conducted, and the report shall be prepared in accordance with the following standards and requirements:

- a. the Evaluator's actions shall be in conformance with the professional standard of care applicable to the evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the state agency that licenses the Evaluator;
- b. the Evaluator shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations;
- c. the Evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the evaluator and an attorney of record representing a party in a disputed suit, provided, however, that this requirement does not apply to a communication between the Evaluator and an attorney ad litem or amicus attorney;
- d. the Evaluator, to the extent possible, shall verify each statement of fact pertinent to the child custody evaluation and shall note the sources of verification and information in the report;
- e. the Evaluator shall state the basis for the evaluator's conclusions or recommendations in the report;
- f. as required under Texas Family Code §107.108, the report shall contain the Evaluator's name, license number, and a statement attesting that the Evaluator has read and meets the

requirements of Texas Family Code §107.104.

14. IT IS ORDERED that the Evaluator shall file with the court on a date set by the court notice that the report is complete. The Evaluator shall furnish copies of the report to the attorneys for the parties, each party who is not represented by an attorney, and each attorney ad litem, guardian ad litem, and amicus attorney no later than the date they file the notice with the Court.

15. IT IS ORDERED that following the preparation of the report, the child custody Evaluator, at the written request of any court-appointed Guardian Ad Litem, court-appointed Attorney Ad Litem, court-appointed Amicus Attorney, or attorney of record in the case shall make available for inspection and copying all records collected, including but not limited to the following: Copies of the Evaluator's notes, any written communications, writings, records, memoranda, summaries, data, correspondence, test results, videos, photographs, tape recordings, and other tangible records or documents obtained by or created by the Evaluator in connection with or in any way related to the evaluation ordered herein. The costs of copying the records shall be borne by the requesting party, should that party desire copies of any portion of the records to be made. This provision does not apply to any unredacted Child Protective Services Records that have been provided to the evaluator which remain confidential pursuant to Texas Administrative Code 700.203 and Texas Human Resources Code 40.005. Parties wanting copies of Child Protective Services Records must either obtain them from the agency directly or request in-camera review by the court.

16. IT IS ORDERED that no information gathered by the Evaluator or her office staff, including any conversation between the evaluator and any party, child, investigator, attorney, or collateral source, is confidential or protected by any privilege. The court finds that pursuant to Rules 509 and 510, Texas Rules of Evidence, **NO RIGHT OF CONFIDENTIALITY OR PRIVILEGE** attaches to any communications between or with the Court-appointed child custody evaluator, the parties, or any other person with whom the Evaluator interacts, that are relevant to this proceeding. Information provided by the parties may be shared with others involved in the evaluation (including where necessary and appropriate, children and collateral sources) so that verification of information provided can be sought and so that others are afforded the opportunity to respond to allegations that may have been made. The evaluator shall inform any party, child, attorney or collateral source that any information received shall not be confidential or protected by any privilege or discovery.

17. IT IS ORDERED that the Evaluator shall have immunity consistent with Texas law for actions undertaken pursuant to the Court appointment and this Order. The Court finds that the immunity afforded to the Evaluator through appointment by the Court is often insufficient to protect the Evaluator from defending against a complaint filed with the Behavioral Health Executive Council (BHEC). The Court further finds that it is in the best interest of the child, the parties, and the public, that the Evaluator should be allowed to follow the Court's Order without fear of reprisal for conducting services and making recommendations consistent with this order. IT IS SO ORDERED, any alleged impropriety or unethical conduct by the Evaluator be brought to the attention of the Court in writing prior to a complaint being made to BHEC.

18. IT IS ORDERED that the Evaluator shall testify at the final trial or other hearing and/or in a

deposition in this case at the written request of any attorney of record and upon issuance of a subpoena. However, unless otherwise ordered by the Court, the requesting party shall be responsible for the Evaluator's customary and usual fees for testifying and said fees shall be paid or advanced prior to testimony and payment of said fees shall be a condition precedent to the evaluator's required testimony, unless otherwise ordered by the Court or agreed upon by the Evaluator and the requesting party.

19. THE COURT FINDS that the Evaluator is entitled to any report, record, working paper, or other information in the possession, custody, or control of the Department of Family and Protective Services that pertains to the persons involved in the evaluation. Any unredacted Child Protective Services Records that have been provided to the evaluator remain confidential pursuant to Texas Administrative Code 700.203. Parties wanting copies of Child Protective Services Records must either obtain them from the agency directly or request in-camera review by the court.

20. IT IS FURTHER ORDERED that the child custody evaluator shall maintain and retain the evaluator's records in accordance with section 107.112 of the Texas Family Code and any applicable laws, including rules applicable to the evaluator's license.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Judge Presiding

AGREED:

Printed Name:

\_\_\_\_\_

Bar Number:

\_\_\_\_\_

Attorney for Petitioner

Printed Name:

\_\_\_\_\_

Bar Number:

\_\_\_\_\_

Attorney for Respondent