STATEMENT OF UNDERSTANDING

2014

General Information:

In an order signed Fill in date of court order, 2014, Judge XXXX appointed me to conduct an impartial evaluation of comparative custodial fitness. My purpose in conducting this evaluation is to gather information that will enable me to formulate opinions bearing upon custody/visitation arrangements most likely to be in the best interests of your children. Though the manner in which my fees will be paid has been determined either by the Court or through negotiations among the parties and their attorneys, and though my fees are not paid by the Court, the work that I will be doing will be done for the Court. Regardless of the source of an impartial evaluator's remuneration, an impartial evaluator is expected to operate as though s/he were employed by the Court. It is particularly important that this position be understood when fees are being paid only by one of the two parties. The fee-paying party cannot simply call a halt to the evaluation. The authority to instruct an evaluator to perform no further services rests with the court, not with the party who bears the financial responsibility for payment of the evaluator's fees (nor with that party's attorney).

I do not presume that those whom I am evaluating are lying; however, neither do I presume that they are being truthful. Forensic psychologists are expected to secure verification of assertions made by those whom they are evaluating. Your cooperation will be expected as verification of assertions made by you is sought.

Ordinarily, unless otherwise directed by the Court, at the conclusion of the evaluation I will forward copies of my report to the court and attorneys of record. If an individual is representing him/herself, I will follow direction from the Court concerning whether or not to provide that individual with a copy of the report. Your signature on the last page of this document will authorize me to release information to the attorneys and to the Court at any point in the evaluative process, to release to them my final advisory report, and to release my file to anyone who is authorized by law to review it.

With the exception of information presented to you in order to afford you an opportunity to respond, information gathered by me is ordinarily not disclosed prior to the completion of the evaluation. Under certain circumstances, however, disclosure of information may be deemed advisable by me or may be requested by the attorneys or by the court. If disclosure is deemed appropriate, only *information* will be shared. Interim recommendations will *not* be offered.

Authority to release to others (such as treating practitioners) my advisory report and/or any of the information utilized by me in preparing the report rests with the Court.

Privilege, Confidentiality and Privacy:

Principles of confidentiality and privilege do not apply within the context of an assessment such as the one being conducted. Information provided by you,

regardless of the form in which it has been provided (your statements, tape recordings, diaries, correspondence, photographs, etc.) may be shared with others involved in the evaluation (including, where necessary and appropriate, children and collateral sources.) By presenting information to others, verification of information provided can be sought and the other party can be afforded the opportunity to respond to allegations that may have been made. Statements made by children may have to be cited in an advisory report and it is, therefore, important that you not mislead your children. Do not tell a child that what is said is confidential. It is not. Information concerning your payments (amounts, source of payments, form of payments) is also not confidential.

Office staff and associates must check my telephone messages, read my mail, and type my correspondence and reports. Those who work for me receive instruction in matters relating to confidentiality.

The need may arise for me to discuss the evaluation with other professionals and/or provide a copy of the final advisory report and pertinent supporting documents to colleagues for their review and comments. In either case, all names and identifying information will be changed. In discussions with my practice partners, names are not changed.

Fees:

Fees are $XXXX per hour. The cost of most child custody evaluations that I conduct in the Charlotte area range from about $XXXX to about $XXXXX. Some evaluations are more costly generally due to the amount of material that is being submitted for review. Note that I reserve the right to increase fees (with appropriate notice to you). Also note that fees for an assessment of this type are not reimbursable by health insurance.

My services as an evaluator commence with my acceptance of the assignment to conduct an evaluation. Though I do not actively seek information prior to our first evaluative session, information may come to me in the form of statements made in telephone interactions, etc. Even information not actively sought by me will be considered by me in the formulation of my opinions (since, in my view, ignoring unsought information is not a viable option). Additionally, in most cases, some time will have been expended by me prior to your receipt of this document (for example: phone time with the Court, the attorneys, and correspondence/email time). For these reasons, fees are charged retroactively; that is, from the time of my notification by the court of my appointment to conduct this evaluation.

If, in my judgment, it is advisable that I consult with other mental health professionals, attorneys, or other professionals, time expended by me in such consultations will be billed for. Any fees charged to me by those with whom I consult will *not* be passed along to the person(s) financially responsible for the cost of the evaluation.

The record-keeping requirements of forensic work make it necessary to log each telephone message and make a record of even the briefest telephone call. For this reason, there will be a minimum fee of $XX (5 minutes @ $XXX/hour) charged for any phone contact.

Once an evaluation has been concluded, fees paid may be reapportioned through negotiations among the parties and their attorneys or by Court Order; however, while the evaluation is in progress, fees cannot be apportioned based upon what was done for whom. All work relating to the assessment (obtaining and reviewing documents, contacting others for information, etc.) is done in order to obtain as much relevant information as possible and cannot be viewed as work done for one party or for the other. Similarly, fees cannot be apportioned in a manner that involves assigning financial responsibility for the fees associated with certain services to one party and responsibility for fees associated with other services to the other party.

There may be times when an individual being evaluated will be required to pay fees for time expended by me in obtaining and reviewing information that the individual would have preferred that I not obtain or review. Similarly, there may be times when the financially responsible party (parties) will be required to pay fees in connection with the evaluation of a third party whom the financially responsible party (parties) would have preferred that I not evaluate.

If it should become necessary for me to report allegations of abuse/neglect to Child Protective Services (CPS), the financially responsible party (parties) will be billed for any time expended in filing the report, being interviewed by CPS, etc. This may mean that a financially responsible party will have to pay for time expended in reporting him/her to CPS.

There may be times when the actions of one party will make it necessary for me to make phone calls and/or write letters. In calculating fees for my services, no distinction is made between time expended in administrative matters and time expended in providing psychological services. Fees for time expended in administrative matters are apportioned as are all other fees. In summary, fees are charged for time expended in any/all professional activities associated with the evaluative process or arising from the evaluative process. This includes time expended in addressing fee-related matters.

It is to your advantage to organize any material that you submit for my consideration. You are paying for my time and more time is required to review material if it has been poorly organized. Any items submitted to me should be clearly identified with your name. This is particularly important in the case of photographs, audio tapes (including microcassettes), diary pages, and notes.

The performance of evaluation-related services by me does not always cease with the issuance of my report. Fees for all post-evaluation services (correspondence, phone time, attendance at conferences, etc.) are the responsibility of the party requesting the services, unless other arrangements have been made in advance or the Court has ordered that responsibility for these fees be apportioned in some other manner.

If there is a trial or if an evaluator is called to be deposed, an expert cannot be compelled to offer opinions without remuneration. If one wishes an expert to make a court appearance or appear at a deposition, one must pay the expert’s fees for time expended, including reasonable fees for time expended in preparation. Though the judicial system protects experts from being compelled to appear without remuneration when their opinions are being sought, the law does not protect experts

from being subpoenaed as fact witnesses (for example: to describe, as an eye-witness to an auto accident might, events that transpired in their presence). I must, therefore, require you to agree that if my presence is requested for any reason, the fees specified above will be paid by the party requesting my presence, unless other arrangements have been made in advance or the Court has ordered that responsibility for these fees be apportioned in some other manner. Additionally, the scheduling of my testimony will be done in consultation with me and with an appropriate recognition of possible conflicting personal or professional commitments. In the unlikely event that an appearance by me is requested by the Court, my fees will be paid by the party (parties) responsible for the other costs associated with my evaluation and in the same proportions, unless otherwise directed by the Court.

Some courts across the country have begun ordering that the evaluator's fees for trial-related expenses be paid by the non-favored party. If that should occur, the non-favored party will be required to pay the *same* fees that would otherwise have been paid by the favored party, including fees for time expended in preparation for trial. If this portion of the *Statement of Understanding* raises any questions concerning your possible financial obligations, please bring your questions to my attention and to the attention of your attorney.

Return of fees:

Though fees paid for services rendered are not returned even when an evaluation has not been completed, you are not expected to pay for services that have never been performed. Since fees for certain services (such as the report outlining the findings of the evaluation) are paid in advance, certain circumstances (such as a settlement) may make it unnecessary to perform services for which fees have already been paid. Under such circumstances, fees paid in advance will be refunded. It must be understood, however, that no refunds will be made until I have been formally notified, either by the court or by the attorneys for both parties, that it is the position of all involved that my task has been completed, that no further services will be requested, and that I am discharged. Upon receipt of such formal notice, a final account statement will be prepared and any funds owed by me to the financially responsible party (parties) will accompany the final account statement.

It must also be understood that if I have reserved time and settlement is reached 48 hours or less before deposition or trial, no monies will be refunded that were specifically reserved for deposition or trial.

Limitations, Risks, and Services NOT provided:

The profession of psychology has not developed specific methods and procedures for use in assessing comparative custodial fitness and neither the profession of psychology nor the State of North Carolina has established specific criteria. The criteria that I employ and the methods and procedures that I utilize have been chosen by me. Any questions that you may have will be responded to during our initial evaluative session.

Unless instructed otherwise by the Court, I will, as the evaluation progresses, share information (including preliminary impressions) with a Guardian *ad litem* if one has been appointed. Subsequent to the completion of my evaluation and prior to the preparation of my advisory report, I am willing to confer with the attorneys if such a conference is desired by all involved and not objected to by the Court. Detailed

information concerning my findings, however, will be communicated in writing only. Be aware that the dispute is not resolved with the issuance of my report. Though the information provided and opinions expressed are intended to assist the court, the court may reject all or portions of the information provided and/or may reject the opinions offered. Also recognize that, though it has not yet occurred, the possibility exists that, even after having completed a thorough examination of the issues, I may not be able to offer an opinion with a reasonable degree of professional certainty. Neither under this circumstance nor under circumstances in which completion of the evaluation becomes either impossible or unnecessary are fees for services already rendered refunded. (If an evaluation has not begun, fees for time expended in attempts to commence the evaluation, document review, etc. will be subtracted from any retainer fee paid and the balance will be refunded.)

It is not possible to guarantee that an evaluation will be concluded by a specific date. Ordinarily, judges who have requested that forensic evaluations be performed wish to have advisory reports prepared prior to the commencement of a trial. Though quite unlikely, it is possible that a judge will begin trial prior to receiving an advisory report.

Reasonable steps are taken to minimize the distress associated with the evaluation process. Nevertheless, though approximately 95% of the cases in which I have been involved have been resolved without a trial, I must presume that there will be a trial and must conduct myself accordingly. This means that information that you provide will be questioned and, at times, you may feel as though you are being interrogated rather than interviewed. In order to perform my Court-ordered function, I must be an examiner, not a therapist.

It must be understood that I cannot provide psychological advice to individuals whom I am evaluating. If counseling or psychotherapy services are desired, I will be pleased to provide the names of appropriate professionals. The emergency pager used in my clinical practice is for use only in clinical emergencies and only by those to whom I am providing clinical psychological services. Since I cannot provide emergency assistance to someone whom I am evaluating, the emergency pager is NOT to be used either by those whom I am evaluating or by their attorneys. If an emergency situation arises, assistance should be sought through the police, the nearest hospital, your therapist, or your attorney (depending, of course, on the nature of the emergency).

Unless I have been directed otherwise by the court, I will presume that all items in the case file are discoverable (that is, subject to examination) by both parties, their attorneys, the attorney for the children (should one be appointed), and any expert(s) who may have been retained by counsel for either party or the GAL. In the event of a trial, unless I have been directed otherwise by the court, all items that I have created during the evaluation that are in the case file will be brought with me to court any day that I am scheduled to offer testimony.

If there is a trial and if you should request that I testify, it is important that you understand my obligations as an evaluator and as a testifying expert. I am obligated to maintain my impartiality and openness to new information throughout the course of the evaluation and during the trial. It is *not* my obligation to defend the precision of facts reported, the accuracy of data interpretations made, or the validity of opinions offered in the face of newly introduced information that might reasonably call them into question. Though it is more likely than not that testimony offered by

me will explain and be supportive of the contents of my report, no assurances can be offered that this will be the case. A cross-examining attorney may bring to my attention information of which I was unaware (either because it was not brought to my attention during the course of my evaluation or because it pertains to events occurring subsequent to the issuance of my report). The attorney may ask how the new information might affect my professional opinion of you and/or the other parent/care taker. I will, of course, respond honestly. You must recognize that I am not an advocate for the person who seeks my testimony and that I am obligated to offer any/all pertinent information that might be of assistance to the Trier of Fact. I must, for example, provide information concerning your parenting strengths and deficiencies and the other parent/care taker's parenting strengths and weaknesses. Put most simply, fees paid to me represent compensation for time expended. The person paying my fees cannot be assured that my testimony will be helpful to his/her case.

Opinions expressed by me in my advisory report will be formulated on the basis of information provided to me between the day on which I was initially contacted and the day on which the report is prepared. There are time when new information that you may believe is critical to my investigation is discovered after submission of my report. I will not review any information after submission of my report and prior to trial unless the attorneys agree in writing that I am to re-open my investigation or unless the Court so orders.

If any questions arise concerning legal matters, you must consult with your attorney. It is inappropriate for someone not trained in the law to attempt to respond to questions concerning legal matters.

Psychological Testing:

It is expected that when individuals being evaluated come to my office for the purpose of taking psychological tests they will arrive unaccompanied. Spouses, children, companions, and friends can serve as sources of distraction. If someone must transport the test-taker, that person will be asked to leave and not return until the test-taker has finished.

Submission and retention of documents:

Ordinarily, in consultation with your attorney, it will be possible for you to anticipate what documents I am likely to require. Obtaining pertinent documents prior to the commencement of the evaluation will expedite the evaluative process. Documents that you wish me to consider must be delivered in a manner that ensures their safe transfer into my custody and I must receive written assurance that documents submitted for my review have been provided to the other party. Under no circumstances are litigants or others to make unannounced visits to our office in order to deliver documents.

Because I may be called upon to produce all items (documents, tapes, photographs, etc.) that I have considered in formulating my professional opinion, it is my policy to retain any items that are presented to me for my consideration. You are therefore strongly encouraged to make copies of any materials that you intend to turn over to me. If you neglect to make copies and if you later require copies, you will be charged for time expended in preparing copies. If, prior to trial, a lawful request is made that I copy and release items in my file for examination by an attorney or by an

appropriate reviewing mental health professional, all involved will be notified. Unless an objection to the release of the requested items is brought before the court and honored by the court, the requested items will be released. (You are reminded that your signature on this document will constitute an authorization to release requested items to those lawfully entitled to receive them. Under most circumstances, those lawfully entitled to receive them include the court, the attorneys for both parties, and any consultants retained by the attorneys.) The attorney requesting copies will pay the costs associated with producing the copies. (Currently, the standard fee for photocopying is $.20/page. I reserve the right to charge a higher fee for pages both sides of which must be copied and/or for items on non-standard size pages (that is, other than 8.5" x 11").

Out-of-session contact:

Out-of-session contact (casual waiting-room conversation, telephone calls, etc.) should be avoided. It is to your disadvantage to communicate information to an evaluator in an informal manner. Phone contact should be limited to scheduling appointments and addressing other procedural matters. Information concerning matters pertinent to the evaluation itself should not be communicated by phone. If you must contact me by phone, leave a message clearly stating the reason for your call; provide a telephone number at which you can be reached; and, specify the times at which you can be reached.

Obtaining additional information:

Individuals being evaluated must agree to authorize me to obtain any documents that I may wish to examine and to authorize communication between me and any individuals who, in my judgment, may have information bearing upon the subject of the assessment. In most cases, information needed from professionals (teachers, other mental health practitioners, etc.) will be obtained by telephone and release of their records to my office. Individuals who are likely to be advocates for one party or the other will be expected to provide information in writing (though I reserve the right to contact such individuals by phone if clarification and/or additional information is required).

Where specific instructions concerning those to be evaluated (and how extensively they are to be evaluated), information to be obtained, etc. has not been included in the Order appointing me, the decisions concerning these matters will be made by me. There may be instances in which I will be asked to review information that I reasonably believe is likely to be more prejudicial than probative and instances in which I will be asked to contact individuals whom it would, in my judgment, be inappropriate to contact. I must be the final arbiter in such situations.

I reserve the right to consider any information regardless of the manner in which it has been obtained (unless it has been obtained illegally). If I am asked to consider information that may have been illegally obtained, I will follow instructions from the attorneys if they are in agreement. If they cannot agree, I will request direction from the Court.

If you wish to have individuals write to me on your behalf, they must write to me directly. Letters are not to be forwarded to me by you or by your attorney. Letters received by me will be reproduced by me and furnished to the attorneys for the parties and the attorney for the children. It is your responsibility to explain to anyone

from whom you solicit a letter that the information contained in the letter may be revealed to *any* of the individuals involved in the evaluation (including children, if necessary and appropriate) and may be quoted in the advisory report. Unless advance approval is obtained, any information transmitted via fax or email by anyone other than the attorneys or the Court will be discarded unread. If individuals writing on your behalf wish to fax or email a letter to me, they must also forward a hard copy of the letter that includes their signature.

Contact with attorneys:

Once I have received word that I will be conducting an impartial evaluation of comparative custodial fitness, I endeavor to avoid *ex parte* communication with the attorneys representing the litigants. If a Guardian *ad Litem* has been appointed, I will speak periodically to him/her and will exchange information with him/her (unless instructed not to do so by the Court). In my judgment, our roles are similar and it is, therefore, appropriate that we share information. During the evaluation, oral communication with attorneys for the parties will occur only if it is not in contravention of a Court directive, only if it can be done by means of a conference or conference call, and only if unusual circumstances make such communication necessary. If correspondence becomes necessary, it must be on a copies-to-all basis. Once the evaluation has been completed and my report has been released, I *will* engage in oral discussions with the attorneys if I deem it advisable to do so, if no objections to such discussions are raised, and if such discussions are not in contravention of the court's Order or subsequent directives.

Allegations of abuse/neglect:

It must be understood that *I am required by law to report allegations of abuse or neglect* (even if they have been previously reported). The penalties imposed on mandated reporters who fail to report such allegations are severe. If allegations are made, they will be reported and my action in reporting them must not be interpreted as a display of support for the individual who has made the allegations or as an indication that I disapprove of the alleged actions of the person who has been accused. Most importantly, it must not be inferred that my reporting of such allegations suggests that I find them credible.

Post-evaluation developments:

Following the submission of my report, I will take reasonable steps to avoid contact with the litigants and with counsel. No substantive response will be provided to letters, faxes, e-mails, or phone messages. If a trial has been scheduled and either party feels that new information should be considered by me, this will be done only if a formal request is made by both attorneys or ordered by the court and only if each party is afforded an opportunity to present his/her perspective on the additional information.

I do not participate in post-evaluation settlement discussions unless (1) the law permits litigants to waive privilege (2) both litigants, with written approval by counsel, have done so, and (3) this post-evaluation role has been agreed to, in writing, at the outset of the evaluation.

A litigant who believes an evaluator's findings and/or recommendations to be flawed is entitled to request that the evaluator's work be reviewed by another mental health

professional. Though the favored party may not wish the evaluator's work to be critically examined, such scrutiny is entirely appropriate and the evaluator's entire file should be made available to the consultants retained by the attorneys for the purpose conducting such a review. It is my policy to cooperate with those seeking to review my work. An exception: Mental health professionals who are related to or involved in social or professional relationships with litigants should not offer their services either as evaluators or as reviewers. Efforts by such individuals to obtain my file will be resisted and the file will be released only in response to a court order.

I ask that you thoroughly review this document with your attorney. The evaluation will not proceed until both of the parties have expressed their understanding of and willingness to abide by the policies and procedures set forth in this document.

Your signature below indicates (1) that you have received, read, and understand my policies and procedures; (2) that you recognize that neither the principle of confidentiality nor the principle of privilege applies to any information in my file concerning this matter; and, (3) that you are authorizing the release by me, either orally or in written form, of any/all information in my file, including my advisory report, to the Court, the Guardian *ad Litem*, the attorneys for both parties, and any organizations or individuals lawfully entitled to the information, including qualified mental health professionals retained to review my work.

With specific regard to information that might ordinarily be protected from disclosure by HIPAA provisions, in signing this document, you acknowledge that pursuant to HIPAA Section 164.512(e)(1)(i) of the Code of Federal Regulations, disclosures of otherwise protected health information may be provided in the course of judicial or administrative proceedings. Your authorization for the release of my file is not qualified; it includes an authorization to release information provided to me by health service providers who may have been collateral sources of information. You also acknowledge that once records have been released by me to the court, to the attorneys, or to consultants retained by the attorneys, I no longer exercise control over who may access the information contained in those records.

Though your signature represents an agreement to comply with my policies and procedures, it is not inferred that you agree with these policies and procedures. Further, by signing this document, you are not waiving any rights you may have to raise objections to any policies or procedures.

Though this copy must be signed and returned, you are urged to make a photocopy and retain it for your reference during the course of the evaluation.

Signed: XXXXXXXXXXXXXXXXXXXXXXX

Date Signed: