

Sample Order for Experts Assigned Pursuant to  
Judiciary Law §35(5)

At a Term of the Supreme Court held  
in and for the County of \_\_\_\_\_  
\_\_\_\_\_ at the Courthouse  
located at \_\_\_\_\_  
\_\_\_\_\_ on the  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

P R E S E N T:

Hon. \_\_\_\_\_  
Justice of the Court

-----X

Index No.

**ORDER APPOINTING MENTAL  
HEALTH PROFESSIONAL**

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IT IS HEREBY ORDERED , that \_\_\_\_\_,  
whose office is located at \_\_\_\_\_ and  
whose telephone number is \_\_\_\_\_, is hereby appointed to conduct a  
forensic evaluation in the above-captioned case and is to examine the following persons:

<u>NAME</u>	<u>RELATIONSHIP</u>
_____	_____
_____	_____
_____	_____
_____	_____

and to interview any extended family members or persons affiliated with either party's household, if deemed relevant, and to submit a report to the court ***within 90 days from the date of this Order*** addressing the following special issues:

_____ physical custody/parenting time	_____ mental illness
_____ decision making	_____ relocation
_____ domestic violence	_____ interference with parental rights
_____ substance abuse	_____ grandparent visitation
_____ other (specify): _____	

and to appear and testify if so directed by the court and it is further

ORDERED, that upon the request of the evaluator, absent an order limiting such disclosure, the parties shall provide releases such that the evaluator may speak with any healthcare professional, therapist, or school personnel and procure any other records, reports, or material, relevant to the parties or child(ren) that the evaluator believes will be of assistance in conducting the evaluation; and it is further

ORDERED, that the appointed mental health professional is not to delegate components of the evaluation to any individual without prior approval of the court; and it is further

ORDERED, that counsel to the parties shall provide copies of any and all documents, papers or other materials requested by the evaluator and shall simultaneously furnish those materials to opposing counsel and counsel for the child(ren) (if any); and it is further

ORDERED, that neither party's counsel, nor the counsel for the child(ren), shall have any contact with the evaluator, except with regard to scheduling, payment issues and in exchanging of documents as provided above; and it is further

ORDERED, that if the evaluator determines that exigent circumstances exist requiring court intervention, the evaluator shall also notify counsel for the parties and the counsel for the child(ren); and it is further

ORDERED, that the evaluator shall include in his/her report a list of all documents and persons consulted; and it is further

ORDERED, that the report shall be submitted to the court, the counsel for the parties, and counsel for the child(ren). The report shall be shown to the parties. However, copies shall not be provided to the parties absent court order; and it is further

ORDERED, upon receipt of a discovery request pursuant to Article 31 of the Civil Practice Law and Rules after submission to the court and counsel of the evaluator's report, the evaluator shall make available to the court and counsel for all parties, including counsel for the child(ren), a copy of all underlying data and notes utilized in preparation of the final report, subject to further order of the court prohibiting or regulating the manner of the disclosure of these materials; and it is further

ORDERED, the evaluator  shall  shall not make a recommendation to the court as to which parent ultimately should have custody of the child(ren) and further  shall  shall not make a recommendation as to the other specific issues to be addressed in the evaluation; and it is further

ORDERED, that the parties are to contact the evaluator within one week from the date of this Order to commence the evaluation. In addition, the evaluator's retainer shall be paid within ten (10) business days of the date of this Order; and it is further

**One (1) of the following:**

**I. [For Use In Private Pay Cases]**

ORDERED, that the court having made appropriate inquiry into the financial status of the parties, the plaintiff shall pay \_\_\_\_\_ % of the evaluator's fees, and the defendant shall pay \_\_\_\_\_ % of the evaluator's fees, 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 ordered 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 of appointment, the mental health professional shall send to counsel for the parties, including counsel for the child(ren) (if any), detailed bills of services rendered.

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

The failure to comply with the provisions of this order relating to payment of the fees of the mental health professional shall be subject to judicial sanction.

## **II. [For Use When All Parties are Indigent]**

ORDERED, that the court having made appropriate inquiry into the financial status of the parties, and being satisfied that the litigants are financially unable to pay the costs of the forensic services provided for herein, compensation for said forensic evaluations, and any court appearances in connection therewith, shall be paid pursuant to Section 35 of the Judiciary Law, at a rate not to exceed \$\_\_\_\_\_ per hour to a maximum amount of \$\_\_\_\_\_.

A finding of extraordinary circumstances has been made by the Court to warrant compensation to the forensic evaluator in excess of the statutory maximum (\$200).

ORDERED, that no less often than every sixty days from the date of this order of appointment, the mental health professional shall send to counsel for the parties, including counsel for the child(ren) (if any), an itemization of services rendered.

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.

## **III. [For Use In Mixed Indigent/Private Pay Cases]**

ORDERED, that the court having made appropriate inquiry into the financial status of the parties, the plaintiff shall pay \_\_\_\_\_% of the evaluator's fees, and the defendant shall pay \_\_\_\_\_% of the evaluator's fees, including an initial retainer in the sum of \$\_\_\_\_\_, subject to reallocation at trial; and it is further

ORDERED, that the court having made appropriate inquiry into the financial status of the parties and the court having determined that plaintiff/defendant, is financially unable to pay his/her proportionate share of the costs of the forensic services provided for herein; accordingly, said plaintiff's/defendant's proportionate share shall be paid pursuant to Section 35 of the Judiciary Law.

ORDERED, that the cap on the forensic evaluation is not to exceed a rate of \$\_\_\_\_\_ per hour, to a maximum of \$\_\_\_\_\_. 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, on notice, for additional compensation prior to the expenditure of time. Only upon a written showing of extraordinary circumstances will

compensation be awarded in excess of the statutory maximum.

ORDERED, that no less often than every sixty days from the date of this order of appointment, the mental health professional shall send to counsel for the parties detailed bills of services rendered.

The failure to comply with the provisions of this order relating to payment of the fees of the mental health professional shall be subject to judicial sanction.

**E N T E R:**

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Justice