



Dr. Sue Anne M. Tonkins
Lic. Psychologist, CA #16004

Agreement and Addendum to the FL327

Petitioner: _____
Respondent: _____
Minors: _____ DOB: _____
Minors: _____ DOB: _____
Minors: _____ DOB: _____
Minors: _____ DOB: _____

RE: Petitioner v Respondent EC 730 Child Custody Evaluation

IT IS HEREBY STIPULATED AND AGREED by and between the parties and their respective attorneys of record that:

1. Sue Anne M. Tonkins, Ph.D. is appointed to perform a full partial child custody evaluation as authorized by Family Code section 3111 in connection with the above-captioned case.
2. This appointment as a child custody evaluator is under E.C. 730, and California Rules of Court, rule 5.220.
3. This appointment is not effective and accepted by the evaluator until the following conditions are met: (a) the signing of this agreement by parties, attorneys, evaluator and (b) receipt of the retainer fees in full and in their proper form.
4. Within 10 days of her acceptance of this case as defined herein, Dr. Tonkins will file a FL-326 petition.

Litigation Privilege, Civil Immunity, Indemnification

5. The evaluator is an officer of the court and protected by the litigation privilege (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843); *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948).
 - a. In performing the evaluation, the evaluator will be engaged in a quasi-judicial role and shall be entitled to absolute common law and statutory immunity and may not be subject to suit or liability of any nature for any act or omission arising from or related to the evaluation.
 - b. The parties and counsel agree to hold Dr. Tonkins and her consultants/assistants harmless from any claims, demands, causes of action, damages or loss of any kind whatsoever resulting from the procedures, testing, conclusions, recommendations, reports or testimony in connection with the evaluation. If any suit is brought contrary to this provision, the party bringing suit shall pay Dr. Tonkins' legal fees at the rate normally charged by her

attorney and in a timely manner. Such immunity also extends to other professionals with whom Dr. Tonkins may consult or engage to assist with specific portions of the case.

Purpose and Scope of Evaluation

6. Per the order, the purpose and scope of this evaluation are to investigate and provide an analysis of the health, safety, and welfare of the child and to provide recommendations to the court regarding timeshare, decision-making authority, and any clinical or other recommendations.

The purpose of the evaluation is dictated by the court's order. This evaluation may include some or all of the following issues to be evaluated:

- a. The child's attachment to each parent.
 - b. The parent's ability to provide a safe environment for the child.
 - c. The child's wishes and ability to form an intelligent preference regarding a parenting schedule.
 - d. Mental health/ as it relates to the parenting capacity of the parents and the child.
 - e. The parent's ability to support the child's relationship with the other parent.
 - f. The parent's ability to co-parent.
 - g. The degree the child has adjusted to and feels stable in the current parenting plan.
 - h. The child's exposure to criminal activity/domestic violence/substance abuse.
 - i. The impact of proposed parental relocation.
7. The evaluation is full partial scope and the evaluator may in her judgment and discretion, do any or all of the following to gather and assess information:
- a. Obtain and review documents related to custody, which can include but are not limited to police reports, law enforcement records, juvenile records, child protective services records, medical/dental/mental health or other health care records, and school records.
 - b. Review the child's medical, dental, mental health, and other health records, and school and educational records.
 - c. Observe parent-child interaction.
 - d. Consult with other experts.
 - e. Interview parents individually and/or jointly.
 - f. Interview the child.
 - g. Interview the child's family members and/or others who have had contact with the child.
 - h. The parties, counsel, and evaluator will comply with the procedural and substantive requirements of the rule of Court 5.220.
(http://courtnfo.ca.gov/rules/index.cfm?title=five&linkid=rule5_220).
 - i. Psychological testing will be used to assist in the formation of hypotheses related to the issues to be investigated and evaluated in this case.

Procedures, Office Policies, Nature of an Evaluation

8. The parties are ordered to cooperate with Dr. Tonkins on all matters relative to the evaluation, including, but not limited to, scheduling and keeping appointments, providing information, submitting to such psychological evaluation as Dr. Tonkins deems appropriate, completing questionnaires, and providing prompt payment. If Dr. Tonkins determines that outside consultants are indicated based on issues raised, the parties agree to be evaluated by the professional to whom Dr. Tonkins refers them.
9. The parties are ordered to cooperate with Dr. Tonkins if the custody visitation plan needs to be altered to allow the children to spend periods of time in the care of the other parent during this evaluation process.
10. The procedures of the evaluation may include individual interviews of both parents and the children, conjoint interviews, parent-child observations, interviews of significant others, collateral interviews, psychological testing of each party, and other assessment methods that Dr. Tonkins considers to be appropriate. Dr. Tonkins will determine what information is necessary or relevant to the evaluation and the procedures necessary to obtain that information. It is understood and agreed upon that Dr. Tonkins is permitted to consult with or exchange information with other professionals and/or collateral informants as she deems appropriate for the purpose of facilitating her collection of data and preparation of recommendations regarding this family.
11. Dr. Tonkins may request outside consultants, as necessary, to help in this evaluation. For example, if Dr. Tonkins believes a child needs a thorough neuropsychological evaluation or an adult an evaluation for substance abuse, she may refer that to a specialist. These individuals charge for their services at their usual professional rate, and such costs may be included in the costs of the evaluation, or it may be required that the parties pay for these services directly with the consultant, in which case the fees will be paid for with the same percentage split that the parties are ordered to pay Dr. Tonkins' fees. These consultants are covered by the same quasi-judicial immunity that extends to Dr. Tonkins.
12. Additionally, Dr. Tonkins may use assistants to obtain information, such as a psychological assistant to do psychometric testing and/or use JR Investigations/or the like as an assistant to verify law enforcement contacts with the family. Any fees necessary to use these assistants or fees associated with the purchase of the individual tests for each party will be billed to the parties. These assistants are not subject to subpoena.
13. All correspondence will be documented, and e-mails will be saved. E-mails related to scheduling, payment and procedural issues may be sent directly to Dr. Tonkins and do not need to be copied to the other side.

Timelines

14. If requested by counsel, Dr. Tonkins can provide projected timelines for the completion of the evaluation. It is, however, acknowledged by the parties that Dr. Tonkins is unable to guarantee a completion date for the evaluation until she has become familiar with the issues, allegations, and data to be considered in the case. Any projected completion dates may vary depending on the scope of the evaluation, parties' cooperation, issues to be addressed, amount of information to be reviewed, timeliness of the information received by Dr. Tonkins, the scope of collateral

information to be considered, and other issues. Also, the timeline could be delayed if any relevant police reports and/or child abuse reports are not provided/obtained on time.

15. It is the responsibility of counsel to contact Dr. Tonkins to determine whether it is possible to complete the evaluation before a scheduled hearing date and to notify Dr. Tonkins of any changes in the hearing date. Dr. Tonkins will notify counsel and/or the Court if the report cannot be completed by the hearing date and will provide information about when the report can be completed and any issues/obstacles that must be resolved so that the evaluation can be completed. Dr. Tonkins may also notify counsel of dates when she will be unavailable for an extended period. Dr. Tonkins also retains the right to contact the Court, with copies to counsel, to advise the Court of any difficulties she is encountering in completing the evaluation.

Submission of Materials

16. The parties are to submit, via counsel, documentation/recordings after all counsel has conferred and agreed to its authenticity. Please see attachment A for specific instructions on documentation submission. Apart from intake forms, parties are not to submit documentation directly to Dr. Tonkins.
17. Parties should retain copies of all materials provided to Dr. Tonkins. Materials provided to this office must be retained as part of the evaluation file and cannot be returned without a Court order.
18. Per Welf. & Inst. Code §827(K), the evaluator shall have access to all child welfare and juvenile court records relating to the minor child in this family and the opportunity to interview all workers who have investigated any abuse or neglect reports relating to the child. A copy of this stipulation will suffice to authorize the Department of Children's Services, the Juvenile Court, or any other entity to give the evaluator full access to all records and information relating to the children and the parents.

Interviews

19. Most evaluations include one or more conjoint interviews with both parents or parents and significant others present. In most cases, the child will also be observed with each parent and/or significant other in the household. At times, home or school visits will be conducted. If there is a restraining order precluding such a joint meeting, it is the responsibility of counsel to notify Dr. Tonkins of those terms of the restraining order/s.
20. Should a translator be required, the parties will be charged for those services according to the financial breakdown provided in the Court Order.
21. Dr. Tonkins will obtain information and take handwritten working notes by assistant or evaluator or through digital means. A report will be created based on the integration of this data, observations in and outside the office (if they occur), collateral information, consultations, test results, and intake/checklist.
22. Some interviews may be conducted via an online platform such as Zoom or Webex, and parties agree to this format. If objection, this is to be placed in writing in advance of any online meeting.

Avoidance of Harm, and Stress

23. Each party further understands that parts of this evaluation may be emotionally stressful, including but not limited to answering questions about painful events, being asked about personal and/or private issues in his/her life, hearing or reading results of the evaluation, which may be perceived as critical, and having other people learn about formerly private matters as a result of Dr. Tonkins report or testimony. Both parties are encouraged to seek therapeutic support from other professionals as they may deem it helpful to assist them in coping with the stresses associated with this process.

Avoidance of Dual Roles and Bias, Neutrality, Objectivity, and Reporting Fairly

24. Additionally, the nature of any relationship that Dr. Tonkins has had with either attorney and/or the parties should be clear prior to the onset of this evaluation. In stipulating to Dr. Tonkins being the evaluator, all involved think that the evaluator is going to be able to approach this case with the objectivity and neutrality called for in such an evaluation. It is important that this level of trust remains. If the parties or their counsel should have any questions about Dr. Tonkins' neutrality, they agree to ask her those questions. Thus, it is the responsibility of each party and/or counsel to bring up any questions that they have as to Dr. Tonkins' neutrality throughout the process of the evaluation. This cannot be brought up post-assessment if the issue was not brought forward prior.
25. All data shall be weighed impartially. Reference may be made to pertinent peer-reviewed published research where applicable.
26. Dr. Tonkins will seek data about each parent's strengths and vulnerabilities as a parent.
27. Furthermore, where significant deficiencies are noted in a parent, the evaluator shall specify the manner in which the noted deficiencies bear upon the issues before the court and make suggestions about how such deficiencies can be remedied.
28. Notwithstanding the foregoing, the evaluator shall retain all information gathered and shall be responsive to lawful requests for the production of that information. Specifically, an order of the court is required for Dr. Tonkins to release her written files to counsel in this matter.
29. It is understood, though, that per California law governing the disbursement and extra level of confidentiality afforded Child Abuse Reports (CARs), Dr. Tonkins will not produce any CARs as they cannot be copied and passed on to parties other than the one who acquired them. If Dr. Tonkins is served with a specific order signed by the Court that offsets the California law governing disbursement and the extra level of confidentiality afforded CARs, Dr. Tonkins will, of course, follow the court's order.
30. It is also understood that Dr. Tonkins shall not release testing data to anyone other than a licensed psychologist or licensed clinician with adequate training to interpret the testing. Thus, the parties and their counsel are informed herein that should the testing data be ordered post the completion of the evaluation, Dr. Tonkins requires that: (a) she is served with a specific order of the Court signed by the judge ordering her to release such test data; (b) and/or the party/counsel requesting the data is to name a licensed psychologist to whom Dr. Tonkins is to release the test data.

31. Dr. Tonkins will not participate in any dual roles in this case.
 - a. She shall refrain from negotiating settlements with the parties and/or with their attorneys because one person assuming two roles -- as a mediator and as an evaluator-- is a dual relationship.
 - b. Dr. Tonkins is appointed as an investigator, forensic psychological expert, and custody evaluator, not a psychotherapist. She will not become a therapist for any member of the family during or after the evaluation is completed for the same reasons. It should be noted that if Dr. Tonkins makes any suggestions to either parent, those suggestions are part of the evaluative process (and meant to be probative) and not therapeutic interventions. As the evaluator, Dr. Tonkins will in fact, make recommendations to the parties, their attorneys, and the Court, but it is understood that she shall not act in the capacity of a therapist to any member of this family.

Privilege, Confidentiality and Privacy.

32. Each party acknowledges that he/she has read, understands, and has had an opportunity to confer with his/her attorney about this contract.
33. Each party understands that this evaluation and the information considered herein is not confidential since it will be principally reported to attorneys and the court, but it is otherwise confidential.
34. Each party hereby waives the psychotherapist-patient and/or any other statutory or non-statutory privilege (to the extent otherwise applicable) so as to permit disclosure of any relevant information (acquired in the course of the previously privileged psychotherapist-patient and/or other statutory or non-statutory privilege) to Dr. Tonkins and further to facilitate the disbursement of the recommendations and/or report prepared by Dr. Tonkins or disclosure of any other information, observation, or communications obtained or made in the course of the evaluation to therapists working with any member of this family. This waiver shall not constitute a waiver of the attorney-client privilege or work product doctrine.
35. Where the parties hereby voluntarily waive the psychotherapist-patient privilege for themselves and for each of their children, it is for purposes of this evaluation only.
36. Each party hereby waives all statutory or non-statutory privileges so as to permit Dr. Tonkins to have access to health, mental health, educational, law enforcement, employment, and similar records, to confer with health care providers, therapists, educators, and other persons whom Dr. Tonkins believes are necessary for the purposes of performing the evaluation, and for them to confer with Dr. Tonkins. To the extent necessary, each party is ordered to sign all documents/releases necessary to provide Dr. Tonkins access to such records or persons. Each party does not waive the attorney-client privilege and attorney work product doctrine.
37. The parties confirm and acknowledge that they understand that any Protected Health Information released to Dr. Tonkins as part of this evaluation may ultimately appear in Dr. Tonkins' report, feedback session, or testimony and may be released in response to a court order unless the Court has issued a protective order preventing Dr. Tonkins from releasing this information.
38. The parties and their counsel agree that the evaluator's investigation may include interviewing collateral witnesses and confidentially discussing the case with

consulting professionals. The parties must use their best efforts to provide the evaluator with contact information (specifically e-mail addresses) for access to such collateral witnesses, sign any necessary releases, and facilitate Dr. Tonkin's access to them.

39. The duration (see *in re Marriage of Kreiss* (2004) 122 Cal. App.4th 1082) of the privilege and privacy waivers contained herein is limited in time to the pending order to show cause and any trial on the issues of child custody and visitation and terminates with the entry of a further judgment on reserved issues on the issues of custody and visitation. In other words, these waivers do not cover records created, communications made, or other new privileged material that comes into existence after entry of a custody judgment, and thus, the privilege for such records is not waived by this stipulation and order.
40. All records and data obtained by the evaluator pursuant to these releases will be provided to counsel for the parties upon the order of the Court and used by counsel in consultation with any independent experts retained by each party. These waivers do not include waiver of the attorney-client relationship or authorization for the release of information developed in consultation with privately retained work product experts for the purposes of litigation.
41. To protect the privacy interests of the family, this order contains specific protective orders that govern access to and distribution of the data, records, testimony, reports, and other material that comprise the evaluation process and product. The parties and their counsel understand that the parties have no expectation or rights of privacy or confidentiality other than those created by the specific terms of this appointment order.
42. Dr. Tonkins is a mandated reporter of any reasonable suspicion of allegations of abuse or neglect. It must be understood that Dr. Tonkins is required by law to report reasonable suspicion of abuse or neglect. If reasonable suspicions of abuse exist, they will be reported, and Dr. Tonkins' action in reporting them must not and is not to be interpreted as a display of support for the individual who has made the allegations or as an indication that she disapproves of the alleged actions of the person who has been accused. The law mandates Dr. Tonkins to file if there is only a suspicion of, not a full finding of abuse. It is the purview of CPS to investigate any reasonable suspicions of child abuse or neglect. Most importantly, it must not be inferred that her reporting of such allegations suggests that Dr. Tonkins finds them credible. Once a child abuse report is filed, Dr. Tonkins may or may not continue with her full investigation as defined in this document. In some instances, it may be best for Dr. Tonkins to pause her investigation while Social Services completes theirs.

Ex Parte Communication.

43. As permitted by Fam. Code §216, and California Rules of Court, Rule 5.235 (effective July 1, 2006), this provision governs all communication about substantive matters between counsel and the evaluator and the exclusive means by which the evaluator may receive and consider written materials and correspondence submitted by the parties and counsel. The intent of this provision is to provide a means by which the participants can submit referral questions, discussions of the issues,

references and substantive evidence to the Evaluator for consideration, while keeping the evaluation process fair and transparent, with opportunities to present rebuttal material and analysis.

- a. All oral communication between the evaluator and attorneys for the parties about the substance of the case must be made with the consent or contemporaneous participation of all counsel.
- b. To avoid unnecessary expense, counsel (and self-represented parties) is encouraged to jointly submit a single, complete copy of any document from the Court's file that any party, counsel, or the evaluator would like the evaluator to review and that is relevant to Child Custody.
- c. Nothing in this provision bars the evaluator from soliciting, obtaining, and considering records and other tangible materials from non-party witnesses.
- d. Materials transmitted to the evaluator as provided herein are not ex parte communications within the meaning of this stipulation and order or Fam. Code §216.
- e. Neither counsel shall initiate oral contact with the Evaluator without prior notice to the other party and an opportunity to be present (in person, telephonically, or electronically).
- f. The only communication allowed between Dr. Tonkins and an individual counsel without the opposing counsel being present on the phone involves the arranging of phone conferences and/or other scheduling issues.
- g. Any discussions about issues related to the evaluation of the parties will be discussed with both attorneys concurrently, and if not, Dr. Tonkins shall relay the same message to each attorney within a short time of each other.

Compensation of the Evaluator

44. The cost of the evaluation shall be \$325 per hour¹ for all non-court/counsel contact time necessary for the performance of the evaluation, including, but not limited to, initial arrangements for the evaluation, meetings or conferences (including telephone conversations) with the parties, the parties child, and anyone else deemed necessary for the purposes of performing the evaluation, psychological testing, analysis of psychological test findings and other data, any necessary research, report preparation, the cost for court preparation, proceedings, meetings with counsel, depositions and records ordered are billed at \$400 an hour.

1. All telephone calls, faxes, e-mails, and letters will be billed at a minimum of 3 minutes. Appointments missed or cancelled for any reason without 2 full court days (8:30am to 4:30pm, weekdays only. i.e., if you have an appointment any time on Wednesday and you call to cancel after the previous Monday morning at 8:30am, this will be billed. If you have an appointment on Monday at any time, you must cancel before the previous Thursday at 8:30am) in advance notice will be billed at Dr. Tonkins' \$325 per hour rate. The retainer fees do not include any work done after the report is turned in – work that might include attorney conferences, meet and confers, depositions and/or trial. All fees in full must be paid prior to Dr. Tonkins being served with a subpoena to testify. Testimony in courts within Orange, Los Angeles, Riverside, San Bernardino, San Diego, and Ventura counties will be billed at \$4000 per day (including travel time) not including preparation time for the court appearance or deposition testimony with fees due no less than 10 court days prior to the court or deposition appearance by cashier's check, or valid check. In the situation where a deposition or court appearance is cancelled, or Dr. Tonkins is not needed, the deposit will be refunded only if she receives notice five weekdays prior. There will be no refund if the evaluator appears, and the hearing or deposition does not proceed or is shorter than anticipated. Otherwise, if the cancellation occurs five full court days in advance, the deposit will be refunded minus services that have been rendered (including preparation) prior to the cancellation at the rate of \$400 per hour.

45. Should the evaluator need to travel outside of Orange, Los Angeles, Riverside, San Bernardino, San Diego, or Ventura counties, there will be travel costs in addition to the hourly rate for service. The evaluator will estimate the overall costs of travel, and advise parties of the said cost, and this is to be paid (allocation based on court order) prior to reservations being made. Airfare will be booked at a business class rate; meals are \$80 per diem per person; hotels will be equivalent in pricing to a 4-star Marriott brand, and ground transportation will be billed as needed (rental car, taxi, and/or Uber rides). The evaluator will decide if an assistant is necessary, and this cost will be included in the estimate. Because this evaluator may have to arrive a day prior or leave a day later, disabling the evaluator from seeing other clients, there will be a maximum daily rate required (this covers 8 billable hours).
46. The parties acknowledge that these fees are reasonable and that it is their responsibility to ensure payment.
47. The party or parties responsible for payment of this evaluation is set forth by court order.
48. If Dr. Tonkins deems it appropriate, the parties and/or their minor child shall submit to other assessments such as psychological testing, psychosexual evaluation, drug and alcohol assessment, etc. The costs of such tests are separate from the fees submitted to Dr. Tonkins and may need to be paid directly to the consulting professional. The fee allocation will be the same as outlined in the court order, regardless of which party is undergoing further outside assessment. The results of this testing will go to the evaluator, not the parties, and will be included in the custody evaluation.
49. Immediately upon this evaluator's acceptance of the appointment, the party responsible for payment per court order shall advance \$7,500 in cashier's check or a valid check to Dr. Sue Tonkins.
50. Dr. Tonkins requires that a minimum balance of \$2,000 be maintained at her office to continue the evaluation or for communication to the Court regarding obstacles encountered in completing the evaluation.
51. The data will not be analyzed, conclusions will not be drawn, and opinions and recommendations will not be formed until all fees and anticipated fees have been paid to Dr. Tonkins and/or any professionals she has consulted with. It is specifically agreed that in the absence of such payments, Dr. Tonkins shall be under no obligation to analyze the data, draw conclusions, form any opinions, and/or prepare or release a report and/or participate in any further matters in connection with the said evaluation and, furthermore, the parties will be deemed to have waived their right to call Dr. Tonkins as a witness or to compel her testimony by subpoena if all fees are not paid in full. The parties acknowledge that Dr. Tonkins is entitled to fees for services provided in good faith; fees for services already provided are not refundable in any circumstance.
52. Upon assurance from both counsel that Dr. Tonkins' services will no longer be required in this case, including that phone conferences and/or trial preparation and/or testimony will not be required, Dr. Tonkins will refund the sum of money, if any, by which advances received exceed fees earned.
53. The Court retains jurisdiction to reallocate the fees or costs under this Order between the parties, pursuant to motion or as part of an award of attorney's fees and costs or

order unless she receives a signed Stipulation and Order directing a modification of the division of fees between the parties. To reduce stress on the child, Dr. Tonkins encourages all parties to separate financial disputes from the completion of the evaluation and to reach whatever temporary agreements may be necessary to allow the evaluation to be completed.

54. Dr. Tonkins and her consultants may be called upon to testify only as expert witnesses, at their usual and customary fee, not as percipient witnesses. It is hereby agreed that Dr. Tonkins' office personnel and assistants (including transcriptionists, digital transcription services, psychological testing assistants, and other administrative assistants) shall not be subpoenaed nor called as witnesses.
 - a. Absent a specific court order, the party requiring the appearance of the evaluator at court or deposition shall pay the anticipated fees for testimony preparation and travel within three (3) days of receipt of the subpoena. Subpoenas must be received within fifteen (15) days of the hearing or deposition. The flat fee for deposition or court testimony is \$4000 per day. Expert testimony fees are charged for a full day of the evaluator's time unless the evaluator specifically agrees to appear for a half day at the flat rate of \$2000 for morning or afternoon set schedules (i.e., 8:00 am-noon or 1:00-5:00 p.m.) plus prep time at \$400/hr. Fees for portions of a half or full day will not be made. Any appearance time beyond the first day will be billed at the same rate and must be paid by the same party in the form of a cashier's or certified check. In the absence of such advance payment, Dr. Tonkins will not testify in deposition or at trial in the case. You remain liable for costs. Dr. Tonkins shall advise the court if there is a payment issue.
 - b. If the appearance at trial or deposition is canceled by notice received by the evaluator at least three court days before the appearance, the deposit minus fees for any preparation conducted prior to the cancellation will be refunded if no fees or costs for the evaluation are unpaid. Otherwise, such deposits are non-refundable, representing compensation to the evaluator for clearing her calendar and preparing for the hearing.
55. Should Dr. Tonkins be asked, she shall provide statements of services and costs to the parties and counsel within fifteen (15) days of the request. Payment shall be considered delinquent if not made within three court days of the statement's e-mail. The evaluator may suspend professional activities during any period when the parties have not kept the account current. Unpaid fees are subject to monthly late fees (up to 3%), court action, and collection by an outside agency.
56. If the evaluator performs services or incurs costs in connection with this matter before this order is entered, those services and costs shall be included in the evaluator's fees for the case and paid in the same manner as all other fees and costs.
57. Services rendered during this evaluation are neither health services nor health service-related, and this evaluator will not complete claims for health insurance reimbursement. Insurance companies do not pay for court-related services, and Dr. Tonkins will not bill insurance companies for her services in a custody evaluation and/or expert testimony.
58. The parties understand that the evaluator has made no warranties or guarantees regarding the conclusions or findings of her evaluation and will exercise her

independent judgment in conducting it. The fees and costs paid under this stipulation and order are not contingent on results or outcomes. Should the parties stop payment, no records or reports will be provided until the evaluation is paid in full.

Complaints

59. The parties receiving services are entitled to the standard of care provided for psychologists practicing under the code of ethics of the American Psychological Association (APA) and the standard of care as set forth in California Rules of Court 5.220. Any complaint or grievances regarding the services of the Evaluator shall first be presented in written form to the Presiding Judge, using the grievance procedure established under Evidence Code Section 730, before being referred to the evaluator's professional association(s) or licensing board. Neither party shall complain about the evaluator to a licensing board or professional organization without doing three things in the following order. In signing this agreement, each party agrees to follow the process described now should there be a grievance with anything having to do with this custody evaluation:

- a. First, a meet and confer with the evaluator shall occur to resolve the grievance and
- b. Second, a meeting is to occur between Counsel and the evaluator, again to resolve the grievance and
- c. Third, reference item #24 in this contract.
- d. Then, if the issue is not resolved in the above, the grievance is to be presented to the Judge, after which, if the grievance is not resolved,
- e. The party may seek assistance by the evaluator's professional organization.

The parties and counsel agree in signing this document that this process for grievances shall be followed without exception.

Admissibility, Distribution, and Use of the Evaluator's Report and Testimony

60. Upon completion of any requested written report and receipt of payment in accordance with this Order, Dr. Tonkins will transmit the original report to the Court, with paper and/or electronic copies, to both counsels. In the interest of preserving confidentiality and protecting minor children from access to written reports, this examiner does not release to *in pro per* parties copies of any written child custody evaluation reports. Rather, this examiner will provide a copy to the Court for that pro per party to use at any Family Law hearing.

61. For purposes of protecting the parties' child, counsel may show and/or review the contents of the report² with the parties but may not provide the parties with a

² The parties and counsel (except minors' counsel) are restrained from telling the minor children what is contained in the report or what the report has recommended, from permitting the children to have access to the report, overhear discussions of the report, or receive information concerning the report from any source whatsoever. The Court charges each party and counsel with responsibility for protecting the children from being placed in the middle of parental conflict, and from unnecessary exposure to the details and issues in the litigation.

All testimony by the evaluator in connection with these proceedings, including depositions and hearings, or arising in other proceedings out of this evaluation, or involving the participants in this evaluation shall be deemed expert rather than percipient, and subject to compensation.

Upon receipt by the Court, such reports shall be marked as the Court's exhibit for identification, and ordered sealed per California Rules of Court Rule 243.2 and, to be inspected by no one except the parties, the other adults assessed as part of the evaluation, counsel of record (including experts with whom counsel may elect to consult), licensed psychotherapists providing assessment or treatment of members of the immediate family of each party and employees of the Superior Court acting in their official capacity.

It is understood that it would be detrimental to the child and parents, and violative of their constitutional right to privacy for the information contained in the evaluator's report or testimony to be made available to any person other than those specifically authorized by this order to receive such information. It is also understood that such disclosure would create risk of harm to the child, adult parties, nonparties and collateral witnesses.

- photocopy or the original report for purposes of photocopying, imaging or otherwise retaining in their possession. If both parents have counsel, under no circumstances shall either parent have possession of a copy of the EC 730 evaluation for this case.
62. Dr. Tonkins' written report in this matter will be received into evidence, subject to the right of cross-examination. The parties waive any evidentiary or other legal objections to the receipt of Dr. Tonkins' report in evidence. The parties waive any objections to the admissibility of hearsay statements contained in the reports (recognizing that an expert witness may use hearsay as part of the basis of her expert opinion) but retain the right to argue the issue of the weight, sufficiency, and reliability of such evidence. Upon receipt by the Court, Dr. Tonkins' report shall be marked as the Court's exhibit for identification and ordered sealed, to be inspected by no one except the Court, the parties, and counsel of record.
63. In the event that the evaluator determines that direct release of the report to the parties and counsel, may place the child, family members or others at substantial risk, the evaluator shall deliver the report only to the Court (and minors' counsel, if any) and may request that the Court set an *ex parte* hearing on the Court's own motion or motion of minors' counsel, at which the parties are required to produce the children, so that the Court may take such emergency precautions necessary for protection of the children, family members or others, pending a full hearing on the report and its recommendations.
- a. The Court finds that by executing this stipulation, the parties have consented to this emergency exception to the statutory requirement that the parties have access to the report for ten days prior to any hearing.
 - b. Risks necessitating use of this provision shall include but not be limited to abduction of the child, punitive action directed at the child, exposure of the child to this information or pressure, risk that a child may runaway, possible suicide, possible decompensation, or exacerbation of symptoms of mental illness.
 - c. Emergency protective actions may include referral for mental health care, temporary changes of custody and visitation, and conduct restraining orders, and such other orders as the Court deems necessary and appropriate under the circumstances.
64. Information contained in the evaluator's file for this case may be released only by Court order. Material specific to psychometric testing (i.e., test booklets, scoring sheets) will not be released due to ethical standards and/or copyright laws. Unless otherwise ordered by the Court, psychological testing data will be released only to another licensed psychologist.

No person may disclose this information to any other person, other than as expressly provided herein, without further order of court, and a showing of good cause.

Each party and counsel are restrained from distributing or providing access to copies of the report (or the records, chart, data, analysis, test materials, transcripts of an evaluator's testimony, transcripts of other persons discussing the evaluator's report, recommendations, or testimony) to any person other than as specifically provided herein and are ordered to use their best efforts to ensure that no one else does so. The parties, counsel and the evaluators are ordered to take all necessary and appropriate precautions to ensure that the report (and the underlying records, chart, data, analysis, test materials, transcripts of the evaluator's testimony) and information contained therein are not distributed, made available or shown to any person other than as expressly provided herein or incidental to the uses set forth herein (for example, clerical personnel). A copy of this order shall accompany copies of the report provided to professionals under the terms of this order.

65. Any subpoena for testimony must be delivered to Dr. Tonkins with at least 15 court days' notice.
66. If there is a trial and if either of the parties and/or their counsel request that Dr. Tonkins testify, it is important to understand Dr. Tonkins' obligations as an evaluator and as a testifying expert. Dr. Tonkins is not an advocate for the person who seeks her testimony, and she is obligated to offer any/all pertinent information that might be of assistance to the Trier of Fact. In other words, fees paid to Dr. Tonkins represent compensation for time expended. The person paying her fees cannot be assured that Dr. Tonkins' testimony will be helpful to his/her case.
67. By signing this document, the parties and their counsel acknowledge receipt of it, understand its contents, and agree to them.
68. A digital/physical copy of this agreement shall be considered as valid as the original. This contractual agreement may be signed in counterpart.
69. The signatures authorizing this evaluation are found on the page that follows.

SIGNATURE PAGE

In signing this document below, each party acknowledges that they have read this 15-page agreement in full, and that they have had the opportunity to discuss the document with their counsel, and finally that they agree to comply with the agreement. If you are self-represented, it is your responsibility to obtain sufficient consultation so that you thoroughly understand the contents of this document herein.

Petitioner/Name Date

Respondent/Name Date

Approved as to Form and Content:

Attorney for Petitioner/Attorney Name Date

Attorney for Respondent/Attorney Name Date

Appointment Accepted Yes No

Evaluator: Sue Anne M. Tonkins, Ph.D. Date
Signature