



CREATIVE CUSTODY SOLUTIONS

AGREEMENT TO SERVE AS SPECIAL MASTER

AUTHORITY: Pursuant to Code of Civil Procedure §638, Dr. Sue Tonkins (“Special Master”) is appointed to provide parent coordination and decision-making ability in this case until resignation, written agreement by both parties, or further Court Order, whichever occurs first. This appointment is based upon the expertise of the Special Master. This appointment is to avoid placing burdens upon the Courts and the litigants and its intention would be to expedite the case, reduce costs, promote effective decision-making for the Court, parties, and counsel. Appointing Dr. Tonkins as the Special Master is necessary to enable the Court to determine the various child custody and visitation issues that arise between the parties on a regular basis in the instant action.

1. The Special Master is a quasi-judicial officer of the Court appointed by Court to provide the following services, which may include but are not limited to:
 - a. Implement the existing parenting plan.
 - b. Help parents reduce conflict around parenting plan and resolve issues in a timely manner.
 - c. Work creatively to ensure the parenting plan can operate well for the children and co-parents and promote compliance.
 - d. Help the parents co-parent and make joint parenting decisions when possible.
 - e. Resolve disputes between the parents concerning the clarification, implementation, and adaptation of a court-ordered parenting plan through the process described in this agreement.
 - f. Parents get the opportunity to take more control of their situation and bring forward issues that are not working well. This will be done in a comfortable non-adversarial setting.
2. The Special Master shall have authority as set forth below to make decisions regarding the best interest of the Minor Children, with the exception that the Special Master shall not have the authority to make any order which changes legal or physical custody.
3. The Special Master shall have the authority to make decisions regarding the following subjects:
 - a. In keeping consistent with the overall custody orders, there can be minor modification regarding visitation schedule or conditions, including days and hours, illness, cancellation policies, and rescheduling/swap rules.
 - b. Minor modifications of current orders regarding holidays, special days and vacations,

including Monday holidays, religious holidays, summer vacations, and school vacations.

- c. Minor modifications of current orders regarding parental communication, including method, frequency, response time, transition emails, and emergencies.
- d. Minor modifications of current orders regarding exchange and/or transportation of the Minor Children, including specifying time and place of exchange.
- e. Minor modifications of current orders regarding education, daycare, and/or extra-curricular activities for the Minor Children.
- f. Minor modifications of current orders regarding transitions, including pick up and drop off days and times, location, rules for parental behavior, transitions, and who is responsible for the transportation.
- g. Minor modifications of current orders regarding day-to-day decisions regarding the Minor Children, including scheduling and attending routine medical and dental appointment, scheduling and attending parent-teacher meetings, sharing of medical and/or school information, and emergency contacts.
- h. Minor modifications of current orders regarding major decisions, including health, mental health, education, and religion.
- i. Minor modifications of current orders regarding travel, including communication of requirements for taking child out of town (itinerary details, notice requirements, etc.), and orders regarding passports.
- j. Minor modifications of current orders regarding general parenting, including shared routines regarding homework, agreements about discipline between homes, keeping children out of the middle of the parents' conflict, no negative comments about the other parent, and cordial parent behavior in front of the children.
- k. The Special Master may, on notice to both parties, recommend to the Court that an attorney be appointed for the Minor Children. Such recommendation shall set forth the necessity for the appointment. If either party objects in writing to the recommendation within two (2) court days of the date the recommendation is made, the matter shall be set for a Case Management Conference at which the parties shall be present. Objections shall be delivered to the clerk's office with a courtesy copy to the Judge's chambers.
- l. The Special Master may request instructions from the Court, either in open court or in a writing directed to the court, on 15 days written notice to all parties, unless shortened by the Court. The parties may choose to respond.

QUASI-JUDICIAL IMMUNITY:

4. The Special Master is an Officer of the Court, acting as a private judge for the parties in this action, to the extent of the Stipulation and Agreement. The Special Master has quasi-judicial immunity. The Special Master cannot be sued based on her actions in this matter.

LIMITS OF CONFIDENTIALITY:

5. Special Master work is a non-confidential process as it has been ordered by the courts and any or all correspondence, notes, observations, interviews, and recommendations may be disclosed to the court. Additionally, all parties need to sign any and all releases requested by the Special Master that are necessary to obtain reports from relevant professionals (e.g., psychiatrist, psychologist, social workers, teachers school officials, pediatricians, hospitals etc.) This includes past records as well as current records.

6. As a licensed psychologist, I am a mandated reporter and as such there are some situations where I am legally obligated to take action to protect and share information about treatment (not all listed here). For example, if I believe that a child, elderly person, or disabled person is being abused, I must file a report with the appropriate state agency.

7. If you and/or a family member/significant other report to me that you have stated a threat of serious bodily harm to an identifiable person, I am required to take protective actions which include notifying the potential victim, contacting the police, and/or seeking hospitalization for you. If you threaten to harm yourself, I may be obligated to seek hospitalization for you or to contact family members who can help provide protection.

8. On a regular basis I have peer supervision and consult with a team of professionals about cases. During a consultation, I make every effort to avoid revealing the identity of my patient. The consultant is also legally bound to keep the information confidential. If you don't object, I will not tell you about these consultations unless I feel that it is important to our work together.

PROCEDURES:

9. **Meetings:** The Court Order frequently outlines the goals and procedures for a Special Master. Please review your Court Order. Generally, I meet with each parent separately. I review relevant documentation and may call collateral contacts before commencing Parent Coordination work. The co-parents then schedule weekly or bi-weekly meetings initially, where you propose issues (they can be given in writing prior to the meeting) and then we work on the issues in session. There are some circumstances where sessions will be remote (Zoom, etc.). Once we obtain some agreements, I will forward these to you. You may share these with your counsel.

10. Provision of Stipulation and Order:

You will provide Dr. Tonkins a stipulation and/or order appointing her as Special Master. This order will have been filed with the court prior to her involvement in this matter beyond the initial interview to determine if Dr. Tonkins will provide services to your family. Court Order should include provisions for quasi-judicial immunity, procedures, decision-making, fee policies, grievance procedures, term of appointment and domains of authority. If not in Court

Order, provisions located in this agreement are considered understood and agreed upon based on signature of this Special Master Service Agreement.

11. **Process:** Both parties shall participate in the dispute resolution processes defined by the Special Master in accordance with principles of due process, which shall include at a minimum the opportunity for each of the parties to be heard. Each of the parties shall be present when so requested by the Special Master. In the event a party does not attend a meeting set by the Special Master, the Special Master may make orders despite the party's absence.

12. **Interviews:** The Special Master may talk with and base recommendations upon conversations with parties, attorneys, witnesses, or examinations of writings which take place without notice to anyone by the Special Master. No record need be made. The Special Master may talk with each party without the presence of either counsel. The Special Master shall have the authority to determine the protocol of all interviews, including the power to determine who attends such meetings.

13. **Use of Assistants/Consultants:** The Special Master may utilize consultants and/or assistants as necessary to aid the Special Master in the performance of the duties contained herein. On reasonable notice to the parties, fees for such consultants or assistants will be advanced by the parties as directed by the Special Master. In making such directions, the Special Master will consider the financial circumstances of the parties. In the event of a dispute regarding the allocation of such fees, the Court retains jurisdiction to resolve the dispute.

DECISIONS:

14. Decisions of the Special Master shall be subject to the following forms of judicial review: Decisions made by the Special Master, if in writing, shall be binding and effective when signed by the Special Master. Decisions need not be in writing and may be made orally if circumstances involving severe time constraints and/or possible emergencies so warrant. Oral decisions shall be binding and effective when made in a fashion communicated to both parties, and such decisions shall be further confirmed in writing to both parties and/or counsel as soon as practicable. Decisions can be submitted to a Judge later, but their date of effectiveness is as stated in this paragraph.

15. An order to show cause or motion challenging an order that is effective as set forth in #14 above, must be filed no later than 15 calendar days after the date of receipt of Special Master's decision. Failure to do so without just cause shall be dispositive of the issue. Notwithstanding any other provisions of the local court rules to the contrary, the filing of the motion is all that is legally required to constitute a challenge to the entirety of the Special Master's decision; the motion shall include a detailed statement of the specific objections to

the Special Master's decision. The decision of the Special Master shall remain effective unless specifically set aside or modified by an order of the Court. Prior to the scheduled hearing, the parties and counsel, if requested by the parties, shall meet, and confer with the Special Master to attempt to resolve the objections. In the event that the issues are resolved, a written stipulation shall be prepared by counsel and submitted to the Court prior to the hearing. The Special Master's decisions may be vacated or corrected on any of the applicable grounds specified in *Code of Civil Procedure* §641, 1286.2, and 1286.6.

16. In the event a party objects to a decision by the Special Master, that party may file a motion with the Court to change or modify the decision. The decision shall remain in effect until changed by the Court. The Court will make an independent determination following a de novo hearing during which the Court will take evidence and decide based upon the best interests of the Minor Children. Prior to scheduling a hearing on such motion, the parties and counsel, if requested by the parties, shall meet, and confer with the Special Master to attempt to resolve the objections. If the issues are resolved, a written stipulation shall be prepared by the Special Master or counsel and submitted to the Court prior to the hearing. Such stipulation shall modify the prior order of the Special Master, in whole or in part, as set forth in the stipulation.

17. The Special Master, in consultation with the parties' respective counsel, shall be provided copies of any motions, objections, or other documents submitted to the Court or issued by the Court necessary to engage in this role.

Fees:

18. The following are billed at \$285 per hour: appointments, documentation review, interviewing collateral contacts, copying files, telephonic, facsimile, or electronic correspondence and appointments cancelled without advance notice of 2 business days. The following are billed at \$400 an hour: preparing and writing directives/reports, court appearances, preparation for court, letters to Counsel and Judges, and travel to and from court. If in-person testimony is required, then a minimum of five hours will be billed. If remote testimony is required, a minimum of three hours will be billed. A subpoena to court must be received a minimum of seven days in advance of the court date. Upon receipt of the subpoena, that date of appearance is reserved. Even with retraction of subpoena or in the case my presence is not required, minimum payment will still be processed. Should one party subpoena me to testify, then that party bears responsibility for costs.

19. A retainer of \$2,850 is required to commence any court ordered/stipulated treatment. It can be paid by a valid check, money order, Venmo (2% fee) or Zelle. On request, there may be allowance for the use of a credit card for payment (with a 3.5% fee).

20. After commencement of treatment when the retainer goes down to \$550 it must be replenished at a sum of \$2,850 (again in keeping with the Court's Order of who is responsible

for payment). A valid credit card must be on file, in the case the retainer isn't paid on time, we will charge the card on file. We will send a courtesy advisement when your retainer is at \$550. Dr. Tonkins has the right to suspend work if fees are not up to date, or she may seek the Court's assistance in the collection of delinquent fees. You will be responsible for all fees incurred in efforts to collect funds. Please note that personal information will be requested to collect fees, and I must provide the necessary information to obtain collection.

21. On occasion there may be a rate increase, and if this occurs, you will have notice in advance of this change. You will be provided in writing notice of a modification of fees, and this will then be placed as an addendum to the existing contract.

22. The retainer will be held until Court determines that the Special Master's appointment is completed. After this time, a credit will be issued if there are funds in the retainer.

COMMUNICATIONS WITH SPECIAL MASTER

23. The Special Master may not communicate ex-parte with the Judge unless there are exigent circumstances requiring immediate contact. The Special Master may communicate in writing to the Judge, so long as copies are sent to the parties' counsel. After the initial appointment is scheduled, your correspondence (outside of session) should primarily be by email only. Note all emails are entered into your file and charged at a rate of \$285/hour. If you have a psychiatric/clinical emergency, contact 911 or proceed to the nearest emergency room. If I will be unavailable for an extended time, I will provide you with the name of a colleague to contact, if necessary.

RECORDS:

24. To avoid unilateral communication to me, it is your responsibility to copy (cc) written communication/documents that you wish to give to me, to the other party. If you are acting as your own attorney, it is advised that you follow all state and local Court rules regarding the dissemination of written materials.

25. Information contained in my file may be released by Court Order only and not by subpoena. Should records be ordered, you will need to pay appropriate fees within 3 business days of when court order is received.

DATA COLLECTION:

26. The Special Master may have access to the following records and information and the parties will execute all necessary releases to facilitate such access:

- a. Children's current/previous pediatricians, psychologists, or mental health professionals.
- b. Hospital and medical records for the children

- c. Children's current/previous daycare/preschool providers
- d. Law enforcement agencies, personnel and records
- e. Custody evaluators
- f. Mediators (if mediation was non-confidential) or Special Masters

RENEWAL, WITHDRAWAL, REMOVAL, GRIEVANCES

27. **Renewal of Term of Appointment:** The parties and the Special Master may agree to renew or extend the term of the Special Master by written stipulation and order.

28. **Withdrawal of the Special Master:** The Special Master may, on notice to all parties and counsel, either may ask that the Court remove her as Special Master, and she shall set forth the reason for such request, or she may recuse herself on her own volition with no reason outlined.

29. **Removal of the Special Master:** The Special Master can be removed or replaced at any time by both party's written stipulation and/or order signed by all parties. In the event the parties do not agree to remove the Special Master, either party may request the removal of the Special Master by noticed motion on any of the grounds applicable to the removal of a Judge, Referee, or Arbitrator, as long as the procedures outlined in #30 have been met. Such motion shall proceed on the written documents submitted by both parties and the Special Master unless the Court orders an evidentiary hearing. Each party and the Special Master may respond to the initial submissions in writing.

30. **Grievances:** Any complaints or grievances from either party regarding the performance or actions of the Special Master shall be dealt with according to the following procedure:

(a) A person having a complaint or grievance regarding the Special Master must discuss the matter with the Special Master in person before pursuing it in any other manner.

(b) If, after discussion, the party decides to pursue a complaint, he/she must then submit a written letter detailing the complaint or grievance to the Special Master, to the other party, to both parties' attorneys (if any), and to the attorney for the child(ren), if one exists. If after the above conditions have been fully met, then the Special Master will have 30 days to provide a written response to the grievance to both parties, both attorneys and the attorney for the child(ren).

(c) If appropriate, given the circumstances, the Special Master can then meet with the parties and their attorneys (if any), to discuss the matter. As stated in #28 the Special Master may, with notice, withdraw from the matter.

