

Amy D. Montague PhD

*Individual and Family Therapy
Child Custody Evaluations*

RE:

LASC Case No.:

STIPULATION FOR APPOINTMENT OF CHILD CUSTODY EVALUATOR
STATEMENT OF UNDERSTANDING

IT IS HEREBY STIPULATED by and between the parties hereto, and approved by their respective attorneys of record, that the following orders are effective forthwith:

1. Amy D. Montague, Ph.D. is appointed as the Child Custody Evaluator to perform a psychological evaluation including Petitioner, Respondent, their spouses, children, their household members, and such other persons as the expert deems appropriate in connection with this action.
2. This appointment is not effective until accepted by Dr. Montague by the execution of this agreement.
3. The purposes of the evaluation are for the expert to:
 - a) assess the benefits and risks associated with the various alternative parenting plans, including those proposed by the parties;
 - b) provide information and analysis to assist the family and the court in resolving issues of custody and visitation in the children's best interests;
 - c) and to make detailed, non-binding recommendations concerning the children's best interests to the parties, counsel and the Court.
4. This stipulation finds, pursuant to the stipulation of the parties, separate and apart from the other terms of this agreement, that in performing the evaluation, the expert will be engaged in a quasi-judicial (including but not limited to referee and/or arbitral function) and shall be entitled to absolute common law and statutory immunity. The expert is protected by the litigation privilege.
5. The stipulation further finds that by its execution, each of the parties has agreed to indemnify and hold the expert harmless from any civil liability resulting from her services under this appointment.

Licensed Psychologist

24050 Madison St. Ste. 100E Torrance CA 90505 Lic# PSY 16740
tel: 888.465.1303 fax: 310.316.9032 e-mail: amymontague@childcustodyeval.com

6. The parties are ordered to cooperate with the expert in all matters in connection with the evaluation including, but not limited to scheduling and keeping appointments, interviews, providing information and records, identifying collateral witnesses, completing questionnaires and assessment instruments, submitting to psychological assessment and testing, substance abuse testing, and structured or unstructured observation. The evaluation process may not include polygraphy. The expert may employ such assistants, associates, or specialists as she deems necessary to conduct this evaluation.

7. This stipulation may only be amended or augmented by order of court, or by written stipulation of the parties and counsel, approved by the Court.

8. All documents, releases, consents, waivers and other matters relating to this evaluation requested by the expert must be submitted to counsel five (5) business days in advance of the date they are requested so as to provide adequate time for review and giving advice to the client. No such document, release, consent, waiver or other document affecting a party's rights with respect to the evaluation may be accepted by the expert unless it is approved by counsel and counter-signed by counsel.

9. Each party is ordered to cooperate with the expert in briefly deviating from any existing custody-visitation schedule, if necessary to permit a child or children to spend periods of time in the care of each parent prior to an evaluation session in the company of that parent or for the child to participate in an evaluation session with a parent. This provision authorizes the evaluator to make short term scheduling revisions for evaluation purposes, but not to impose trial parenting plans, etc. or to permit unsupervised contact with the minor child if there is an existing order conditioning such contact on supervision and or other security or abduction risk prevention orders.

10. Dr. Montague is appointed as a forensic expert and custody evaluator, not a psychotherapist. No psychotherapist-patient relationship is created by this appointment, or by the subsequent conduct of the parties and Dr. Montague. The parties and witnesses to be interviewed and assessed by Dr. Montague are not patients and do not acquire the rights of patients by their participation in the evaluation process.

11. In order to protect the privacy interests of the family, this stipulation 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. This stipulation finds that the parties have no expectation or rights of privacy or confidentiality other than those created by the specific terms of this stipulation.

12. No information, observations of the expert, or communications made between the expert and any person in the course of the evaluation or related to this case shall be deemed privileged or confidential communications, including but not limited to communications made by Dr. Montague, the participants in this evaluation, witnesses, the parties' counsel and experts, the Court or any

mental health professional assessing or treating any of the immediate members of either household or the children. This stipulation finds that all communications will be made with the expectation that they may be disclosed in the expert's report and/or testimony in this proceeding.

13. This stipulation finds that the parties each have waived his/her respective doctor-patient and psychotherapist-patient privilege and each child's doctor-patient and psychotherapist-patient privilege and that each have tendered the issue of the mental conditions of each of them and the children in this proceeding.

a. This stipulation finds that such waivers and tenders permit disclosure of all privileged communications to the expert, except as provided herein, and subsequent release to counsel and consulting experts under the provisions of this order.

b. Such waivers do not constitute waivers of privilege or confidentiality or disclosures of confidential material for any purpose outside the scope of this litigation and may not be used as the basis for any person to obtain such information other than within the scope of this litigation.

c. Each party is ordered to execute authorizations, after review by counsel, for the release of information necessary to provide the expert with access to health, mental health, educational, employment and other records, and the right to confer with health care providers, therapists and educators.

d. Each party is ordered to use his or her best efforts to provide access to any information requested by the expert.

e. All records and data obtained pursuant to these releases may be provided to counsel for the parties, and used by counsel in consultation with any independent experts retained by each party.

f. These waivers do not include waiver of the attorney-client relationship or authorization for release of information developed in consultation with privately retained work product experts for the purposes of litigation.

14. Counsel shall cooperate to ensure that Dr. Montague receives a complete set of all pleadings and transcripts, including depositions, related to the issues of custody at the inception of the evaluation, and to ensure that she receives all subsequent pleadings and transcripts, including depositions, related to those issues.

15. Counsel are restrained from discussing the issues and facts of this matter with Dr. Montague without the participation of all counsel in the conversation. Counsel are free to correspond with Dr. Montague in writing, provided that copies of such correspondence are provide to opposing counsel in a manner reasonably calculated to be received by counsel prior to or at the same time as their receipt by Dr. Montague.

16. Except for the pleadings, all writings or tangible items of any kind submitted by the parties to Dr. Montague for consideration as part of the evaluation, including but not limited to correspondence, documents, records, drawings, computer data, email, diaries, calendars, reports, photographs,

recordings, exhibits or other physical or documentary materials must be provided to Dr. Montague through counsel with a proof of service showing delivery to all counsel. Dr. Montague will not accept any materials submitted directly by the parties, or not in compliance with this provision.

a. The purpose of this provision is to provide each party a realistic and practical opportunity to submit additional materials or comments to Dr. Montague in response to material submitted by the other party.

b. The method of service reasonably calculated to ensure receipt of the documents by counsel at the same time or prior to Dr. Montague's receipt of such documents.

c. Dr. Montague will maintain a list of all such materials received for review, and will provide it periodically upon request of either counsel.

17. The expert's report shall specifically address the potential benefits and risks associated with the alternative proposed orders sought by the parties or considered by the expert. Each party and counsel may submit written histories, referral questions, or references to the expert for consideration.

18. Petitioner and/or Respondent is/are ordered to advance the fees and costs of the evaluation immediately upon execution of this stipulation and its approval by Petitioner _____ and/or Respondent _____ shall advance seven thousand dollars (**\$7,000.00**) to Dr. Montague toward the cost of the evaluation, subject to additional expenses and fees. Dr. Montague shall have the right to request that this or any subsequent payment be made by cashier's check and/or credit card payment.

19. Dr. Montague retains jurisdiction to modify allocation of responsibility for future payments, or to order reimbursement of one party by the other party.

20. Dr. Montague finds that failure to make payments when due will have the effect of unnecessarily delaying completion of the evaluation and seriously compromising the best interests of the child. Dr. Montague hereby advises the parties that she will not tolerate manipulation of the process by delaying payments, and that such conduct may be subject to sanctions.

21. Each party is ordered to make any subsequent payments within five (5) days of actual notice from the expert.

22. In the event that a party does not comply with the payment provisions of this stipulation, the other party may advance such sums and the other party is ordered to immediately reimburse the advancing party.

23. The cost of the evaluation shall be based upon the expert's customary hourly rates set forth herein and shall include all time necessary for the performance of the evaluation including, but not limited to initial arrangements for the evaluation; any meetings and/or conferences (including telephone conversations) with the parties, counsel, the parties' child(ren), and other persons deemed necessary for the purposes of performing the evaluation; analysis of

psychological test findings and other data, research or consultation; correspondence; document review; report preparation; travel time; preparation for expert testimony; depositions or other discovery; court appearances (including waiting time); and "on-call" or other reserved times.

24. The expert shall also be reimbursed for expenses incurred in connection with the evaluation and/or testimony. Such expenses shall include costs and reasonable attorney's fees in connection with or arising from the evaluation.

25. The expert shall have the right to request that the initial payment or any subsequent payment be made by cashier's check or other guaranteed funds or credit card. All fees through the completion of the feedback sessions shall be paid to the expert before the written report.

26. Any remaining unpaid balance necessary prior to release of the written report shall be advanced forthwith upon notification by the expert that the report has been completed. The expert shall have no duty to supply a report or to perform any further services, including but not limited to responding to subpoenas, appearing at court or deposition, or testifying if she has not been paid in full for her services.

27. Dr. Montague's **hourly rate** for the evaluation is **\$200**. The hourly rate shall be paid for all services performed by Dr. Montague in connection with this case.

28. Notwithstanding any other provision, in the event any person (including children) fails to appear at the time of a scheduled appointment, the party responsible for the failure shall be obligated to pay the fee for each missed appointment. Appointments must be cancelled no less than 48 hours prior to the scheduled time to avoid this charge.

29. Charges will be made also for stenographic services and all other out of pocket expenses, which shall be documented by Dr. Montague in her billing statements. Psychological testing will be charged in accordance with Dr. Montague's testing fee schedule, available upon request. Charges for testing conducted outside Dr. Montague's office shall be paid in full to the provider of these services.

30. Time for Dr. Montague to **travel** to court, to meetings, to home observation visits or to any other place away from Dr. Montague's office shall be paid at the rate of **\$100 per hour**. Out of town visits must be arranged separately and carry additional fees.

31. In the event either party or the Court desires Dr. Montague's testimony or presence in deposition, court proceedings or at trial, said Party shall advance all estimated fees as a condition thereof for time incurred related to such testimony, including cross examination.

a. Fees for court testimony shall be paid by the Party in accordance with Dr. Montague's testimony fee schedule for family matters, currently at the

trial rate of **\$1,000.00 per half-day** within Los Angeles County, or at a minimum of **\$2,000.00** for a full day outside of Los Angeles County.

b. Deposition fees are **\$250.00** per hour.

c. Absent specific court order, the party requiring the appearance of Dr. Montague at court or deposition shall deposit the anticipated fees for testimony preparation, travel, and testimony with Dr. Montague at least **ten (10) court days prior to the appearance date** in the form of a cashier's check or other certified funds, provided that counsel actually have received Dr. Montague's report at least 20 days prior to the court hearing.

d. If the appearance at trial or deposition is cancelled 72 hours in advance, excluding Saturdays, Sundays, or holidays, the entire deposit will be credited toward the evaluation with no penalty.

e. Cancellations of scheduled deposition or court appearance with less than 72 hours notice will be charged at the rate of **\$200.00 per hour** for any time lost to Dr. Montague for professional services.

32. If Dr. Montague has already appeared at the deposition or court hearing site when her testimony is cancelled or postponed, the entire fee will be forfeited, with fees for additional time charged in accordance with the provisions of this paragraph.

33. Five hundred dollars (**\$500.00**) of this deposit is a **non-refundable administrative fee**.

34. A statement of services and costs will be mailed by Dr. Montague to the parties on a monthly basis, with copies to attorneys of record. Payment shall be considered delinquent if not made within ten (10) days of the statement's mailing. All fees shall be paid in advance of providing services. As money credited to the Parties' account becomes depleted, due to fees for services being debited against the account balance, additional monies will be requested to cover the anticipated costs of additional professional services by Dr. Montague.

35. Dr. Montague may suspend professional activities during any period when the parties' account does not show a credit balance.

36. All additional fees incurred by the release dates of the evaluation report shall be paid to Dr. Montague in advance as a condition of the release of the report. In the absence of such payment, Dr. Montague shall be under no obligation to release said report or to participate in any further matter in connection with said evaluation, and furthermore the parties will be deemed to have waived their right to call Dr. Montague as a witness or to compel her testimony by subpoena until payment in full is made.

37. Upon completion of all services rendered hereunder, Dr. Montague will refund the sum of money, if any, by which advances received exceed fees earned.

38. Fees may be increased without warning, subject to the Court's retention of jurisdiction to determine the reasonableness of such fees, but the fees noted above are guaranteed for one year from the date of Dr. Montague's acceptance of this appointment.

39. In the event that Dr. Montague performs services or incurs costs in connection with this matter before this stipulation is entered, those services and costs shall be included in Dr. Montague's fees for the case and paid in the same manner as all other fees and costs.

40. The stipulation finds that the parties understand that Dr. Montague has made no warranties or guarantees relating to the conclusions or findings of her evaluation, and that she will exercise her independent judgment in conducting the evaluation. The fees and costs paid under this stipulation and order are not contingent on results or outcome.

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

42. The written report of the expert may be received into evidence, subject to the right of cross-examination or motions to strike portions of the report for good cause, in the above-captioned proceeding. The fact that the report contains evidence (whether or not admissible including hearsay) of the type that may reasonably be relied upon by an expert in forming an opinion upon a subject to which his / her testimony relates shall not be grounds for denying admission of the report. See EC 801 (b). Each party reserves the right to object to any inadmissible evidence in the report for the truth of the matter asserted and their right to object to opinion expressed in the report per Evidence Code Section 803.

43. The stipulation finds that it would be detrimental to the children and violative of their constitutional right to privacy for the information contained in the expert's report or testimony to be made available to any person other than those specifically authorized by this stipulation to receive such information. The stipulation further finds that such disclosure would create risk of harm to adult parties, nonparties and collateral witnesses. Disclosure of this information to any other person other than as expressly provided herein shall require specific application to the Court (with notice to all persons who were evaluated) and a showing of necessity.

44. 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.

45. Copies of the report shall be provided to respective counsel, and may be read by the parties but copies may not be retained by the parties or removed by the parties from the offices of counsel or a licensed mental health professional. All transcripts of proceedings or pleadings discussing the content of the report, the evaluator's records and data, or testimony of the evaluator shall also be governed by this provision.

46. The Clerk of the Court is ordered to take all necessary precautions to preserve the confidentiality of the report, seal the report, and to restrict access to the report. The report shall not be placed in the Court file. The report shall not be included in the file when the file is preserved on microfiche, computerized records or other media. The existence of the report may be noted in the docket and/or register of actions.

47. All proceedings in which reference to the report will be made, or in which the expert will testify shall be closed to the public per Family Code §214.

48. 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.

49. In the event that the expert determines that direct release of the report to the parties and counsel, may place children, family members or others at serious risk, the expert shall deliver the report only to the Court (and minors' counsel, if any) and 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 children, family members or others, pending a full hearing on the report and its recommendations. The Court finds that this procedure constitutes an emergency exception to the statutory requirement that the parties have access to the report for ten (10) days prior to the Court's hearing. Risks necessitating use of this provision shall include but not be limited to abduction of the children, punitive action directed at children, exposure of children to inappropriate information or pressure, risk that a child may runaway, possible suicide, possible decompensation or exacerbation of symptoms of mental illness. Such 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.

50. 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 expert's testimony, transcripts of other persons discussing the expert'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 experts 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 expert'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.

51. All persons who gain access to the report (and the underlying records, chart, data, analysis, test materials, transcripts of the expert's testimony), or any underlying data or analysis are restrained for using it for any purpose whatsoever other than as relates to this litigation specifically, or for treatment of any of the participants in the evaluation process. Each professional is charged with the responsibility for ensuring preservation of the confidentiality of this material (and the underlying records, chart, data, analysis, test materials, transcripts of the expert's testimony), and other materials may be used for teaching, and for research purposes (with the exception of proprietary, copyrighted test instruments) so long as the names and all identifying information concerning any of the participants and collateral witnesses has been redacted.

52. At the completion of the evaluation the expert is ordered to provide each counsel upon request a complete copy of the expert's entire chart (including test materials and raw data), or cooperate in affording access to the chart by a records copying service without further order or subpoena.

a. The court finds that due process requires that counsel have prompt access to the complete records of the evaluator in order to prepare for settlement or contested proceedings, and that any provision for delivery of such records to a mental health professional rather than counsel would violate the parties' due process rights. The Court further finds that the risks of releasing the chart directly to the parties are substantially greater and justify imposition of the requirement set forth herein.

b. The contents of the chart shall be admissible (copies as well as the original) in this proceeding.

c. Nothing may be removed, omitted or altered before the chart is provided to counsel.

d. If either party is appearing *in propria persona* that party must designate a mental health professional (marriage and family therapist, clinical social worker, psychologist, or psychiatrist) licensed by the State of California as his or her representative to receive a copy of the chart and interpret it to that party. The expert may require advance payment for actual costs of copying or the dispatch of a medical records copying service to make copies on the expert's premises.

53. The provisions of this order governing sealing, distribution, and access to the report shall also govern the underlying records, chart, data, analysis, test materials, transcripts of the expert's testimony.

54. The provisions of this order governing sealing, distribution, and access to the (and the underlying records, chart, data, analysis, test materials, transcripts of the expert's testimony) shall also govern any pleadings quoting or referring with specificity to the contents of the report (and the underlying records, chart, data, analysis, test materials, transcripts of the expert's testimony). Counsel are ordered to submit such documents to the Court under seal with a copy of the face sheet marked "SEALED BY ORDER OF COURT" attached to the outer envelope. With the exception of emergency or interim issues until a full evaluation is complete and the matter can be settled or heard, the issues relating to the parenting plan shall not be tried until at least 30 days following the receipt of the report by each counsel so as to permit sufficient time for understanding and assimilating the recommendations, obtaining and analyzing the chart, subpoenaing records, consulting other experts, returning to mediation, and engaging in settlement negotiations.

55. In the event that the report does not address all relevant issues before the Court, or this matter has not been resolved by settlement or contested proceeding within 120 days of the issuance of the report, jurisdiction is retained, upon noticed motion or *ex parte* application or the Court's own motion, to order that the report be augmented to incorporate additional data and/or address additional referral questions. Jurisdiction is also retained to order an augmented report based upon a change of circumstances or the presentation of new issues. Nothing contained in this provision shall restrict the Court from making interim orders, pending such review or augmentation.

IT IS SO STIPULATED

Petitioner	Date	Respondent	Date
Attorney for Petitioner	Date	Attorney for Respondent	Date

Signatures on this stipulation create a binding agreement. It is not necessary that all parties sign on the same document for this binding agreement to be considered valid. The signatures of the petitioner and the respondent are sufficient to endorse these procedures and expectations of this stipulation.