

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

*Administrative Order Nos. 2021-56-Crim (Amended)¹
2021-57-UFC*

**SELECTION, APPOINTMENT, AND PAYMENT OF
COURT APPOINTED MENTAL HEALTH EXPERTS**

- (a) Pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice.
- (b) Florida Rule of General Practice and Judicial Administration 2.215(b)(3) states the chief judge “shall, considering available resources, ensure the efficient and proper administration of all courts within [this] circuit.”
- (c) Section 916.115, Florida Statutes, provides for the appointment of experts to determine the mental condition of a defendant who may be incompetent to proceed to trial.
- (d) Section 916.15, Florida Statutes, authorizes the court to order the involuntary commitment of a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity if the defendant has a mental illness and, because of such illness, is manifestly dangerous to himself or herself or others.
- (e) Section 916.301, Florida Statutes, provides for the appointment of experts to determine whether a defendant meets the definition of intellectual disability or autism and, if so, whether the defendant is competent to proceed to trial.
- (f) Section 985.19, Florida Statutes, provides for the appointment of experts to examine a juvenile who may be incompetent to proceed to trial. Florida Rule of Juvenile Procedure 8.095 establishes the procedure for the examination of a juvenile who is alleged to be incompetent to proceed.
- (g) Section 393.11, Florida Statutes, requires the appointment of a three (3) member examining committee to examine persons being considered for involuntary admission to residential services.
- (h) Section 29.004, Florida Statutes, determines the State Courts System obligations to pay for expert witnesses who are appointed by court order pursuant to an express grant of statutory authority.

¹ Amended solely as to VII(3).

(i) Pursuant to Florida Supreme Court Administrative Order SC18-17², each Circuit must implement a statewide rate structure for the payment of specific categories of expert witnesses and adopt general standards and best practices, if possible, to encourage uniformity across the state. The Seventeenth Judicial Circuit Court in and for Broward County, Florida (“Circuit”) enters into contracts with licensed professionals to provide competency evaluations and reports as required by law.

(j) In accordance with the authority vested in the Chief Judge pursuant to Article V, section 2(d) of the Florida Constitution, section 43.26, Florida Statutes and Florida Rule of Judicial Administration 2.215, and under mandate by the Supreme Court of Florida in *In Re: Court Appointed Expert Witness Services in Florida’s Trial Courts*, No. AOSC18-17, it is hereby **ORDERED** as follows:

I. General Provisions

(1) The Office of the Trial Court Administrator will create and maintain a court-appointed expert witness registry (“Registry”) for use in appointing qualified experts licensed in the fields of expertise and for those legal proceedings outlined herein. Only experts listed on the Registry shall be appointed by the Court to provide expert witness services. The Registry shall include, to the extent possible, the contact information for each expert, including his or her name, business address, email address, telephone and fax number(s), and area(s) of expertise or associated category(ies) for assignment.

(2) The Circuit currently enters into contractual agreements with qualified licensed professionals to provide competency evaluations and reports as required by law. The contracts correspond to the State of Florida’s fiscal year (July 1 to June 30). Prior to contracting with the Circuit to provide expert witness services, each expert must be added to the Registry. Qualified experts not already on the Registry may be added to the Registry by submitting a written request and supporting materials, as outlined herein, **no later than May 1** preceding the fiscal year for which they seek to be added to the Registry to the following address:

Broward County Courthouse
Office of the General Counsel
201 S.E. 6th Street, Suite 20170
Fort Lauderdale, Florida 33301

² Administrative Order SC18-17 amended Administrative Order SC17-12.

(3) The written request to be added to the Registry shall be accompanied by proof of qualifications, as set forth herein, as well as the expert's contact information, such as business name, mailing address, email address, phone number(s), and fax number(s). The expert **shall** submit a curriculum vitae detailing his or her qualifications and professional references, including related experience, education, and certification(s). If approved to be added to the Registry, the expert will be required to execute a contract with the Circuit to provide the agreed-upon services. An expert's failure to comply with the contract requirements, including but not limited to, time deadlines and report formats, may result in termination of the contract and the expert's removal from the Registry.

(4) The expert shall possess and maintain the appropriate State of Florida license to provide the contracted-for services. The expert shall have adequate experience and demonstrate competence in the area(s) of expertise for which they are to provide the agreed-upon services.

(5) To the extent possible, the appointed experts **shall** have completed Florida forensic evaluator training, and, unless otherwise permitted herein or by law, each shall be a Florida licensed psychiatrist, psychologist, or physician.

(6) An expert shall only be appointed pursuant to a written court order. Any party requesting the appointment of an expert shall file a **written motion** prior to the court entering a written order appointing an expert. In appropriate circumstances, the court may, *sua sponte*, enter an order appointing an expert.

(7) If a judge enters an order in a criminal, juvenile delinquency or dependency proceeding requiring the appointment of an expert to conduct an evaluation and prepare a report for which the Court is obligated to pay, the judge shall contact Court Projects. The judge shall provide to Court Projects the following information: (1) the name of the defendant; (2) type of ordered evaluation; (3) the case number(s); (4) the location of the defendant; (5) the defendant's next court date; (6) the defendant's telephone number(s), if he or she is not in custody; and (7) whether the evaluation is to be videotaped and, if so, at whose request. The judge, after being advised by either party that an interpreter is needed, shall also identify to Court Projects the language required. Upon receipt of this information, Court Projects shall access the Registry to identify the names of three (3) experts available to conduct the ordered evaluation, and the requesting judge shall appoint an expert or experts consistent with this Administrative Order and as otherwise required by law. If a re-evaluation is necessary to determine if a defendant remains incompetent to proceed, the judge shall enter a court order to that effect, either upon a **written**

motion of a party or the court's own motion. If a re-evaluation is ordered, Court Projects shall access the Registry to identify the names of three (3) experts for presentation to the requesting judge. A judge may choose one of the experts from the names provided, or alternatively may choose another expert listed on the Registry, not in rotation, if that expert previously provided an opinion regarding the defendant's competency within the preceding twelve (12) months.

(8) In order for an expert to be paid for services rendered, the expert must file a written report with the judge that explicitly addresses each of the factors listed in the order of appointment and applicable Florida Statutes and/or Florida rules of court. If the court deems any competency evaluation or other report to be incomplete, the expert will not be compensated until the court determines that the shortcomings are addressed, even if it requires the expert to conduct a further evaluation of the defendant.

(9) The Office of the Trial Court Administrator will continually evaluate the performance of each of the contracted experts. Performance evaluations may include, but are not limited to, the following:

- a. Consulting with those judges making expert appointments;
- b. The timeliness of the expert in submitting his or her invoice;
- c. The accuracy of the expert's invoice;
- d. Solicitation and review by the Office of the Trial Court Administrator of annual evaluations from the State Attorney's Office, Office of the Public Defender, Broward Association of Criminal Defense Lawyers, the Attorney General's Office of Statewide Prosecution, and the Office of Criminal Conflict and Civil Regional Counsel, Fourth District of Florida.

(10) The expert must immediately notify the Office of the Trial Court Administrator and Court Projects if/when the expert's health compromises his or her ability to conduct evaluations or examinations. Additionally, when any of the below listed events occur, the expert must immediately report the event to the Trial Court Administrator and Court Projects. When the expert is:

- a. Named as a respondent in any injunction involving personal protection, including dating violence, domestic violence, repeat violence and sexual violence, and stalking, in any jurisdiction.
- b. Named as a parent or guardian of a child in a dependency action, in any jurisdiction.

- c. Named as a party in any legal proceeding within the Seventeenth Judicial Circuit.
- d. Arrested, convicted, held in contempt by a court of legal jurisdiction, had adjudication withheld, pleads “no contest,” or enters a plea agreement for any offense other than a civil traffic infraction, in any jurisdiction.
- e. Named as the respondent in any grievance or formal complaint filed by the Florida Department of Health or any other medical licensing authority that is not confidential under Florida law; and when entering any non-confidential consent agreement with any licensing authority.
- f. Involved in any conduct that might reasonably be construed to disqualify a person from selection for service as an expert under the standards and qualifications specified in this Administrative Order and any contract between the expert and the Circuit.

(11) Unless specifically stated otherwise, all flat fee payments referenced herein include payment for travel time, review of all documents, preparation time, actual evaluation, preparation of the written report, and the timely submission of a written report to the court. Experts listed on the Registry shall refrain from sending email communication requesting additional compensation to the judge ordering an evaluation.

II. Criminal Competency – No Suggestion of Intellectual Disability or Autism (Section 916.115, Florida Statutes)

(1) In standard adult competency proceedings, the court will initially appoint **one** (1) expert from the Registry. After completion and receipt of the initial expert’s evaluation, if needed, and legally required, the court may appoint up to two (2) additional experts from the Registry.

(2) Evaluation Payment Rates:

Initial Evaluation	\$300.00
Follow-up Evaluations – Same defendant/same expert	\$300.00

(3) An expert will receive no compensation if he or she is unable to complete a scheduled adult competency evaluation due to the defendant either not showing up or refusing to participate in the examination.

(4) Experts testifying in court will be paid \$150.00 for the first hour or part thereof and \$31.25 for each additional quarter hour, not to exceed a total of two (2) hours or \$275.00. This includes any time spent preparing for, and any wait time associated with, the expert's testimony.

III. Criminal Competency – Suggestion of Intellectual Disability or Autism (Section 916.301, Florida Statutes)

(1) The Court shall appoint at least one (1), or at the request of any party, two (2) experts from the appropriate Registry and appoint the Agency for Persons with Disabilities which will then select a qualified psychologist.

(2) Experts appointed pursuant to section 916.301, Florida Statutes to perform evaluations will be compensated by the Court a flat fee of \$450.00.

(3) An expert will receive no compensation if he or she is unable to complete a scheduled adult competency evaluation due to the defendant either not showing up or refusing to participate in the examination.

(4) Experts testifying in court will be paid \$150.00 for the first hour or part thereof and \$31.25 for each additional quarter hour, not to exceed a total of two (2) hours or \$275.00. This includes any time spent preparing for, and any wait time associated with, the expert's testimony.

IV. Juvenile Competency - No Suggestion of Intellectual Disability or Autism (Section 985.19, Florida Statutes)

(1) In standard juvenile competency proceedings, the court shall appoint no less than two (2) and no more than three (3) experts from the Registry. Judges are encouraged to initially only appoint two (2) experts.

(2) Evaluation Payment Rates:

Initial Evaluation	\$300.00
Follow-up evaluation – Same juvenile/same expert	\$250.00

(3) An expert will receive no compensation if he or she is unable to complete a scheduled juvenile competency evaluation due to the defendant either not showing up or refusing to participate in the examination.

(4) Experts testifying in court will be paid \$150.00 per hour for the first hour or part thereof and \$31.25 for each additional quarter hour, not to exceed a total of two (2) hours or \$275.00. This includes any time spent preparing for, and any wait time associated with, the expert's testimony.

V. Juvenile Competency – Suggestion of Intellectual Disability or Autism (Section 985.19, Florida Statutes)

(1) The court shall appoint the Agency for Persons with Disabilities to examine the child to determine if the child meets the definition of intellectual disability or autism in section 393.06, Florida Statutes, and, if so, whether the child is competent to proceed.

(2) Evaluation Payment Rates:

Initial Evaluation	\$350.00
Follow-up evaluation – Same juvenile/same expert	\$250.00

(3) An expert will receive no compensation if he or she is unable to complete a scheduled juvenile competency evaluation due to the defendant either not showing up or refusing to participate in the examination.

(4) Experts testifying in court will be paid \$150.00 per hour for the first hour or part thereof and \$31.25 for each additional quarter hour, not to exceed a total of two (2) hours or \$275.00. This includes any time spent preparing for, and any wait time associated with, the expert's testimony.

VI. Developmental Disability Examining Committee (Section 393.11, Florida Statutes)

(1) Experts appointed to serve on this Committee must have expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities or autism.

(2) The developmental disability examining committee must include at least one (1) licensed and qualified physician, one (1) licensed and qualified psychologist, and one (1) qualified professional who, at a minimum, has a master's degree in social work, special education, or vocational rehabilitation counseling.

(3) All medical doctors, doctors of osteopathic medicine, and individuals holding a Ph.D. shall be compensated by the Court at a rate of \$350.00 per appointment, and \$250.00 for any re-evaluation or re-examination of the same individual.

(4) All licensed clinical social workers (LCSW), registered nurses (RN), nurse practitioners (ARNP), licensed practical nurses (LPN), and individuals holding a Masters of Social Work (MSW) shall be compensated at a flat rate of \$250.00 per appointment, and \$175.00 for any re-evaluation or re-examination of the same individual.

(5) No expert appointed as a member of a developmental disability examining committee pursuant to section 393.11, Florida Statutes, shall receive any compensation if the expert is unable to complete a scheduled developmental disability evaluation due to the defendant either not showing up or refusing to participate in the examination.

VII. Other Evaluations Not Listed Above

(1) Capital and First-Degree Murder Cases

- a. Rates higher than the flat fee evaluation amounts listed herein are allowable in **extraordinary circumstances** and with the prior approval of the Administrative Judge of the Circuit Criminal Division. Such extraordinary circumstances include review of voluminous case-related documentation or for extensive psychiatric or psychological testing in capital and first-degree murder cases. In these instances, the expert may be paid at the rate of \$130.00 for the first hour and \$33.00 for each additional quarter hour, not to exceed a total of five (5) hours.
- b. All orders permitting payment over and above the flat fee must include specific documentation of the reason for the additional compensation, detail the services the expert is to perform, and specifically detail the additional compensation permitted. All orders issued under this section, including orders for neuropsychological evaluations, must be approved by the Administrative Judge of the Circuit Criminal Division.

(2) Any expert appointed by the court to opine on whether a defendant who has been acquitted of criminal charges by reason of insanity has a mental illness, and because of such illness, is manifestly dangerous to himself or herself or others, shall be compensated a flat fee of \$300.00.

(3) Any expert appointed by the court to perform a DSM-5 assessment shall be compensated \$130 per hour, up to three (3) hours; or a DSM-5 assessment with additional Millon Adolescent Personality Inventory (MAPI) of a defendant shall be compensated \$130 per hour, up to four (4) hours.

This Administrative Order vacates and supersedes Administrative Orders 2020-11-Crim, and 2020-12-UFC.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 8th day of October, 2021.

/s/ Jack Tuter
Jack Tuter, Chief Judge