

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

Third Amended Emergency Administrative Order
Nos. 2023-11-Crim / 2023-12-UFC

**PAYMENT OF COURT APPOINTED MENTAL HEALTH EXPERTS FOR
ADULT AND JUVENILE COMPETENCY EVALUATIONS**

- (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 and applicable Rules of Criminal Procedure provides for the appointment of experts to determine the mental condition of a defendant who may be incompetent to proceed to trial.
- (d) Section 916.301, 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.
- (e) 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.
- (f) 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.
- (g) Pursuant to Florida Supreme Court Administrative Order SC18-17¹, 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

¹ Administrative Order SC18-17 amended Administrative Order SC17-12.

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, and currently compensates such individuals \$300.00 per completed standard competency evaluation.

(h) The existing data demonstrates the urgency of the instant issue requiring issuance of an emergency administrative order:

- a. Since January 1, 2023, 366 competency evaluations have been ordered, and as of February 23, 2023, only 173 have been completed, leaving 193 evaluations outstanding.
- b. As of the initial date of this Emergency Administrative Order, only four (4) mental health experts were willing to accept appointments to examine the mental health condition of a defendant. The majority of other experts the Circuit has under contract complain of the low compensation as reason not to continue to accept new appointments.

(i) It is the intent of this emergency administrative order to increase the expert witness rates for adult and juvenile mental competence evaluations to the maximum amounts allowable under Supreme Court Administrative Order AOSC18-17.

(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**:

I. General Provisions

(1) 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 Circuit’s Registry shall refrain from sending email communication requesting additional compensation to the judge ordering an evaluation.

(2) Experts shall only be appointed upon duly filed written motion of a party, except the judge may *sua sponte* enter an order appointing an expert only if the judge has reasonable grounds to believe the defendant is not mentally competent to

proceed. See Fla. R. Crim. P. 3.210, 3.211, Fla.R.Crim.P. 3.213 and Fla. R. Juv. P. 8.095.

(3) Until further order of the court, all mental health evaluations referenced herein may be conducted using remote technological means (i.e., Zoom).

(4) To the extent that any of the terms of the instant Amended Emergency Administrative Orders 2023-11-Crim and 2023-12-UFC conflict with the terms of Administrative Order Nos. 2021-56-Crim (Amended) or 2021-57-UFC (Amended), the instant Emergency Administrative Orders shall control.

II. Criminal Competency – No Suggestion of Intellectual Disability or Autism (Section 916.115, Florida Statutes, and/or applicable Rules of Criminal Procedure.)

(1) In standard adult competency proceedings, the court shall initially appoint **one** (1) expert from the Registry. See *In Re: Court Appointed Expert Witness Services in Florida’s Trial Courts*, No. AOSC18-17. Judges shall strive to render a competency determination based on a single expert’s report. See, *Tita v. State*, 42 So. 3d 838 (Fla. 4th DCA 2010) (“... nothing in the statutes or rules requires a court to appoint a specific number of experts to evaluate a defendant’s mental competency.”); *Alston v State*, 894 So. 2d 46, 54 (Fla. 2004) (“The reports of experts are merely advisory to the [trial court], which itself retains the responsibility of the decision”). However, nothing herein shall limit a judge from exercising his or her discretion to appoint additional experts pursuant to section 916.115, Florida Statutes, and/or corresponding court rules.

(2) Evaluation Payment Rates:

Initial Evaluation	\$500.00
Follow-up Evaluations – Same defendant/same expert	\$350.00

(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 \$37.50 for each additional quarter hour, not to exceed a total of two (2) hours or \$300.00. 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, and/or applicable Rules of Criminal Procedure)

(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) Evaluation Payment Rates:

Initial Evaluation	\$650.00
Follow-up Evaluations – Same defendant/same expert	\$350.00

(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 \$37.50 for each additional quarter hour, not to exceed a total of two (2) hours or \$300.00. 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 shall only initially appoint two (2) experts, and only appoint a third expert if legally required to do so.

(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 \$37.50 for each additional quarter hour, not to exceed a total of two (2) hours or \$300.00. 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	\$650.00
Follow-up evaluation – Same juvenile/same expert	\$350.00

(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 \$37.50 for each additional quarter hour, not to exceed a total of two (2) hours or \$300.00. This includes any time spent preparing for, and any wait time associated with, the expert's testimony.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this day of 10th July, 2023.

/s/ Jack Tuter
Jack Tuter, Chief Judge