

# Supreme Court of Florida

No. AOSC17-12

IN RE: COURT APPOINTED EXPERT WITNESS SERVICES IN  
FLORIDA'S TRIAL COURTS

## ADMINISTRATIVE ORDER

In Florida's trial courts, court appointed expert witnesses provide independent expert opinions concerning scientific or technical matters in dispute and provide essential support to the adjudication process. Expert witnesses are required to provide expert evaluations concerning the physical, psychological, or mental condition of persons affected by or subject to the dispositional orders of the court in matters involving a fundamental interest or right. The appointment of expert witnesses implicates a variety of practices related to both the management and utilization of resource availability and diverse needs for expert witnesses in Florida's trial courts.

To ensure effective and efficient provision of court appointed expert witness services, the Court directed the Commission on Trial Court Performance and Accountability (TCP&A) through In re: Commission On Trial Court Performance and Accountability, Fla. Admin. Order No. AOSC12-25 (July 2, 2012), and

directed the Trial Court Budget Commission, in accordance with Florida Rule of Judicial Administration 2.230, to establish operational and budgeting policies in the use of court appointed expert witnesses in Florida's trial courts.

To address these directives, the commissions created two workgroups comprised of judges, trial court administrators, court administration employees, and experts to examine current court expert witness operations across the state. In June 2014, after an extensive interactive review process with the trial courts, the TCP&A developed a report titled *Recommendations for the Provision of Court Appointed Expert Witness Services in Florida's Trial Courts*. In May 2015, based on concerning trends related to the trial courts' expert witness contractual budgets, the commissions jointly studied and developed recommendations described in the November 2016 report titled *Expert Witnesses in Florida's Trial Courts: Recommendations from the Joint Workgroup of the Trial Court Budget Commission and the Commission on Trial Court Performance and Accountability*. Both reports focus on recommended standards of operation and best practices for court appointed expert witness services. The recommendations propose administrative, fiscal, operational, policy, and statutory solutions, in order to improve the processes for appointing experts and containing costs.

The specific recommendations outlined in the reports diverge in two areas: selection and appointment of experts and establishing a statewide payment rate

structure for certain types of evaluations. Specifically, the TCP&A's June 2014 report recommends the Office of the State Courts Administrator develop and maintain an online registry of expert witnesses. The commissions' November 2016 report recommends requiring circuits to select experts from a registry maintained by the circuit. Also, the TCP&A's June 2014 report recommends, as a best practice, circuits set standardized rates for expert witness services for each of the most commonly needed expert witness examinations. The commissions' November 2016 report recommends circuits adhere to a required statewide payment rate structure and issue a comprehensive written policy to document rates, policies, and procedures relating to expert witnesses. In particular, the written policy shall address procedures for payment of experts in extraordinary cases, including, but not limited to, capital murder and first-degree murder cases. The statewide expert witness rate structure is intended to establish a range of allowable rates to be used for the most common types of evaluations and follow-up evaluations, by type of evaluation and expert.

Also notable, a policy is proposed which requires the courts to initially appoint only one expert for the evaluation in a standard adult competency proceeding. If the parties do not stipulate to the findings of the first expert, the court may appoint up to two additional experts, pursuant to statute. Although the

same policy is recommended for standard evaluations in juvenile competency proceedings, current statute and rule do not allow the practice.

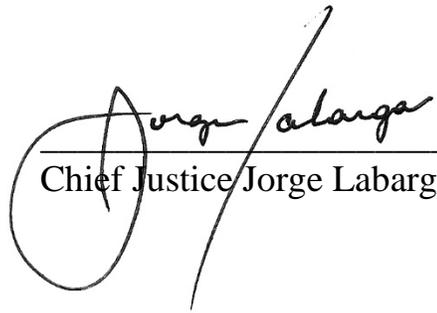
Finally, general standards and best practices are proposed which encourage uniformity across the state through assignment of services, management practices, education, and administrative process improvements. Some recommendations are offered which fall within the purview of another Supreme Court committee and require subsequent action by those committees, as appropriate.

The Court commends the commissions for the important work they have performed in addressing the provision of court appointed expert witnesses in Florida. These work products demonstrate the commissions' aptitude to work effectively together to improve the process of appointing expert witnesses, while at the same time minimizing rising costs.

The attached recommendations are hereby adopted and incorporated herein by reference, as a means to improve service delivery in the use of court appointed expert witnesses in Florida's trial courts. For the two areas in which the recommendations diverge, the Court approves the recommendations outlined in the joint commissions' report for circuit-maintained registries and a mandatory statewide rate structure. The approved statewide rate structure shall be implemented by the twenty judicial circuits as soon as practical, but no later than July 1, 2017. All other terms are effective upon the signing of this order, with the

exception of the policy recommendation related to the selection of court appointed expert witnesses for standard juvenile competency evaluations, which shall be effective only upon a corresponding rule change if the statute is changed to allow less than two experts.

DONE AND ORDERED, at Tallahassee, Florida, on February 6, 2017.

  
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Chief Justice Jorge Labarga

ATTEST:

  
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John A. Tomasino, Clerk of Court



## Expert Witness General Recommendations, Standards of Operation and Best Practices

Note: A “standard of operation” is defined as a mandatory practice and a “best practice” is defined as a suggested practice to improve operations but, due to local conditions beyond the court’s control or budgetary constraints, is not required.

### I. ASSIGNMENT OF SERVICES

<b>A. Staffing Model</b>	<p><i>Standards of Operation</i></p> <ol style="list-style-type: none"> <li>1. Circuits shall determine a staffing model that provides for the efficient and effective use of expert witness services, while maintaining flexibility in order to best fit the jurisdiction’s needs.</li> <li>2. Circuits shall consider the ethical implications and the appearance of bias in determining a staffing mode.</li> </ol>
<b>B. Qualifications of Court Appointed Expert Witnesses</b>	<p><i>Standard of Operation</i></p> <ol style="list-style-type: none"> <li>1. Expert witnesses conducting court-ordered evaluations shall have expertise which, at a minimum, meets statutory or rule requirements for qualification.</li> </ol>
	<p><i>Best Practices</i></p> <ol style="list-style-type: none"> <li>1. Expert witnesses conducting court-ordered evaluations should have at least five years of experience in their area of expertise.</li> <li>2. Expert witnesses should be encouraged to complete a portion of their continuing education requirements in their area of expertise, as it relates to court appointed expert witness services.</li> </ol>
<b>C. Selection of Court Appointed Expert Witnesses</b>	<p><i>Standards of Operation</i></p> <ol style="list-style-type: none"> <li>1. Circuits shall select court appointed expert witnesses from a registry maintained by the circuit.</li> <li>2. Circuits shall initially appoint one expert for the evaluation in standard adult competency proceedings.</li> <li>3. Circuits shall initially appoint one expert for the evaluation in standard juvenile competency proceedings (effective upon complementary statutory and rule revisions).</li> </ol>
	<p><i>Best Practices</i></p> <ol style="list-style-type: none"> <li>1. Circuits should consider the use of expert witnesses from other circuits if the appropriate expert is not available in the local circuit.</li> <li>2. Circuits should consider cultural diversity in the recruitment and retention of expert witnesses.</li> <li>3. Circuits should consider contacting professional associations for possible use of a statewide listserv for recruitment of expert witness candidates.</li> </ol>

### II. MANAGEMENT PRACTICE

<b>A. Forms/Records Management</b>	<p><i>Standards of Operation</i></p> <ol style="list-style-type: none"> <li>1. Circuits shall use the Uniform Invoice for Expert Witness Services developed by the Office of the State Courts Administrator.</li> <li>2. Circuits’ standard orders of appointment shall identify factors, if applicable, that must be addressed in the expert witness’ report.</li> <li>3. Circuits shall keep all records pertaining to the payment of expert witness services in accordance with generally accepted accounting principles and procedures and in such a way as to permit their inspection pursuant to Florida Rule of Judicial Administration 2.420.</li> </ol>
	<p><i>Best Practices</i></p> <ol style="list-style-type: none"> <li>1. Circuits should audit invoices prior to submission to ensure compliance with the approved fee schedule.</li> <li>2. Circuits should share forms and guidelines developed locally, regarding the provision of expert witness services, with other circuits, if requested.</li> <li>3. Circuits should track the number of evaluations per case and defendant.</li> </ol>
<b>B. Contracts with Expert Witnesses</b>	<p><i>Standard of Operation</i></p> <ol style="list-style-type: none"> <li>1. Circuits shall develop a procedure for approval of fees in excess of the statewide rate structure, to require a court order or approval from the chief judge or trial court administrator.</li> </ol>

	<p><b>Best Practices</b></p> <ol style="list-style-type: none"> <li>1. Circuits should be allowed to apply cooperative contract provisions that would allow an expert to be hired using the contract provisions of another circuit.</li> <li>2. The Office of the State Courts Administrator should draft template language for an expert witness service agreement that may be used by the circuits, which contains standardized language in the areas of liability, billing procedure, qualifications of experts, cancellation/termination and record retention/auditing.</li> <li>3. Circuits should include notice in their contracts with expert witnesses that alerts the expert that a videographer or court reporter may be present. For example, “Expert understands that Florida law ordinarily permits a party to have a videographer, court reporter, or court interpreter present during an examination and agrees to the presence of a court reporter or videographer when one is required by Florida law.”</li> </ol>
<b>C. Registry of Expert Witnesses</b>	<p><b>Standard of Operation</b></p> <ol style="list-style-type: none"> <li>1. Circuits shall develop and maintain a registry of approved expert witnesses, by field of expertise. The registry should indicate whether each expert is willing to travel to provide services in other circuits.</li> </ol>
	<p><b>Best Practice</b></p> <ol style="list-style-type: none"> <li>1. Circuits should maintain a list of approved experts, their qualifications, and the approved fees, to share with other circuits, if requested.</li> </ol>
<b>III. JUDICIAL APPOINTMENTS/MONITORING</b>	
<b>A. Evaluation and Retention of Expert Witnesses</b>	<p><b>Standard of Operation</b></p> <ol style="list-style-type: none"> <li>1. Each circuit shall continually evaluate the performance of the expert witnesses that it contracts with or employs.</li> </ol>
<b>B. Issues with Expert Witnesses</b>	<p><b>Standards of Operation</b></p> <ol style="list-style-type: none"> <li>1. Circuits shall have procedures for dealing with inappropriate behavior, complaints, or performance issues of expert witnesses.</li> <li>2. Judges shall require that expert witnesses maintain professional conduct in the courtroom at all times.</li> <li>3. Judges shall report to the appropriate authorities any unethical behavior of an expert witness.</li> </ol>
	<p><b>Best Practice</b></p> <ol style="list-style-type: none"> <li>1. Circuits should consider convening a committee to address complaints and grievances regarding a court approved expert witness.</li> </ol>
<b>IV. EDUCATION</b>	
<p><b>General Recommendations to the Florida Court Education Council</b></p> <ol style="list-style-type: none"> <li>1. Develop an educational component for judges and staff to facilitate the statewide implementation of the requirements for the appointment and payment of expert witnesses. Include the decision tree tool, funding responsibility matrix, and compliance with requirements in Rule 3.210 in education curriculum.</li> <li>2. Within the appropriate bench books (i.e., criminal, mental health, etc.), consider adding a chapter regarding the use of expert witnesses.</li> <li>3. Presentations to judges pertaining to expert witness services should be included periodically at judicial conferences.</li> <li>4. Presentations regarding the use of expert witnesses should be included in some appropriate way at the Florida Judicial College.</li> <li>5. Presentations regarding the use of expert witnesses via webinars should be considered as an alternative to traditional in-person educational opportunities.</li> </ol>	
<p><b>Standards of Operation</b></p> <ol style="list-style-type: none"> <li>1. Circuits shall keep on file the curricula vitae of the expert witnesses who have been approved for inclusion in the registry.</li> <li>2. The Office of the State Courts Administrator shall provide education to court administration staff on invoice use and Uniform Data Reporting system input.</li> </ol>	

- Best Practices**
1. Circuits should offer informational sessions for court approved expert witnesses on administrative and court protocols.
  2. Circuits should determine a procedure to notify court approved expert witnesses on changes to administrative and court protocols.
  3. Circuits should consider posting information regarding expert witnesses. Including protocols and administrative orders, on the court website.

**V. FUNDING/PAYMENT**

- General Recommendations to the Trial Court Budget Commission**
1. Funding allocations should take the total need for funding into consideration in order to bring uniformity and equity to the level of services provided across the trial courts.
  2. The expert witness funding formula should be modified to include expert witness events as well as expenditures.

- Standard of Operation**
1. Circuits shall issue a comprehensive written policy to document rates, policies, and procedures relating to expert witnesses. Circuits may choose the form of the written policy and include rates based on the following rate structure, allowing pay above the statewide rate structure for extraordinary circumstances. In particular, the written policy shall address procedures for payment of experts in extraordinary cases, including, but not limited to, capital murder and first-degree murder cases.

- Standard of Operation**
1. Circuits shall use the following rates in determining payment for court experts. This chart applies solely to standard Adult Competency, Juvenile Competency, Guardianship Examining Committee, and Developmental Disability Examining Committee evaluations. Other types of evaluations shall continue to be governed by circuit-determined rates.

**Expert Witness Rate Structure**

Type of Evaluation	Range of Allowable Rates for Evaluation	Maximum Allowable Travel Rate	Range of Allowable Follow-up Evaluation Rates (With same expert)	Maximum Allowable No Show Rate	Maximum Hourly Testimony Rate, Court Ordered (Including wait time, 2 hour cap)
<b>Adult Competency</b>	\$300-\$500		\$200-\$350	40% of Evaluation Rate	\$150
<b>Juvenile Competency</b>	\$250-\$350		\$175-\$250	40% of Evaluation Rate	
<b>Guardianship Examining Committee</b>					
<i>Ph.D., M.D., or D.O.</i>	\$250-\$350		\$175-\$250	40% of Evaluation Rate	
<i>ARNP, RN, MSW, LPN, LCSW, Lay Person</i>	\$75-\$250		\$50-\$175		
<b>Developmental Disability Examining Committee</b>					
<i>Ph.D., M.D., or D.O.</i>	\$250-\$350		\$175-\$250	40% of Evaluation Rate	
<i>ARNP, RN, MSW, LPN, LCSW, Lay Person</i>	\$75-\$250		\$50-\$175		

**VI. DATA COLLECTION/MONITORING**

- Standards of Operation**
1. The Office of the State Courts Administrator shall sponsor periodic trainings for all individuals involved in the collection and reporting of Uniform Data Reporting System statistics.
  2. All circuits shall require attendance at trainings sponsored by the Office of State Courts Administrator for individuals involved in the collection and reporting of Uniform Data Reporting System statistics.
  3. The Office of the State Courts Administrator shall provide training on the Uniform Data Reporting System to court administration staff and conduct audits.

**VII. STATUTORY REVISIONS**

- General Recommendation**
1. Recommend changes for adult and juvenile competency, developmental disability, and guardianship examining committee statutory sections to clarify ambiguities, identify payment responsibilities, and implement policy recommendations.