

## PAYMENT RESPONSIBILITY MATRIX EXPERT WITNESS

(August 2016)

The guiding principle to determine the court’s responsibility to pay is whether the appointment is made pursuant to an express grant of statutory authority. When there is no express grant of statutory authority, the question is determined by whether the expert was appointed to advise the court or whether the expert is retained or requested by a party advocating a particular position. Court expert witnesses are neutral witnesses, and we pay for those. A witness produced to prove insanity, as an example, is brought in by a party to prove a point. Those witnesses are paid by the party, even if the judge ultimately makes the appointment.

Note: This document reflects current statutory and corresponding rule provisions. However, there are statutory provisions that are ambiguous, need to be corrected due to errors, or may need to be amended to improve the process (see italicized comments). Further, this document does not represent the universe of payment responsibilities that exist, and within the identified case types there may be factual, legal, or other unique circumstances that affect the decision on payment responsibility. Thus, the document is designed to be a guide but not necessarily definitive.

CASE TYPE	STATUTORY REFERENCE OR COURT RULE	BUDGET TO BE CHARGED
<p><b>Adult Competency (Mentally Deficient and Mentally Disabled Defendants)</b> – Court appointed expert agrees to evaluate defendant under section 916.115, F.S., or the Florida Rules of Criminal Procedure, or any other relevant Florida law for determinations of competence to proceed.</p>	<p>Section 916.115(2), F.S. Section 916.12, F.S.</p> <p>Rules 3.210 and 3.211, Florida Rules of Criminal Procedure</p>	<p style="text-align: center;"><b>Court</b></p> <p>For experts appointed by the court only for the determination of competency. If the expert addresses issues related to sanity as an affirmative defense, the court only pays for that portion of the fees related to competence.</p> <p>Unless an expert testifies regarding competency pursuant to an order from the court, the state courts system does not pay for the expert to testify in court.</p> <p style="text-align: center;"><b>Public Defender</b></p> <p>For any experts retained by that office or the portion of the costs for an affirmative defense of insanity, if addressed in the same evaluation as the competency.</p> <p style="text-align: center;"><b>Regional Counsel</b></p> <p>For any experts retained by that office or the portion of the costs for an affirmative defense of insanity, if addressed in the same evaluation as the competency.</p> <p style="text-align: center;"><b>State Attorney</b></p> <p>For any experts retained by that office to testify on behalf of the prosecution and appointed by the court in order to ensure that the expert has access to the defendant.</p>

<b>CASE TYPE</b>	<b>STATUTORY REFERENCE OR COURT RULE</b>	<b>BUDGET TO BE CHARGED</b>
<b>Adult Competency (Mentally Deficient and Mentally Disabled Defendants) – Continued</b>		<b>JAC</b> For any experts retained by an indigent defendant who is represented by a court-appointed private attorney or who is indigent for costs, or the portion of the costs for an affirmative defense of insanity, if addressed in the same evaluation as the competency.
<b>Fees of Physicians Who Determine Sanity at the Time of Sentence</b>	Section 921.09, F.S.	<b>County</b> <i>(Current statute says that the fees shall be paid by the county. In practice, the courts may pay.)</i>
<b>Fees of Physicians When Pregnancy is Alleged as Cause for Not Pronouncing Sentence</b>	Section 921.12, F.S.	<b>County</b> <i>(Current statute says that the fees shall be paid by the county. In practice, the courts may pay.)</i>
<b>Adult Competency (Mentally Deficient and Mentally Ill Defendants – Violation of Conditional Release</b>	Section 916.17, F.S.	<b>Court, if needed</b> <i>(Current statutes says that the court shall hold a hearing but is silent to who pays. In practice, the courts may pay.)</i>
<b>Baker Act Evaluations –</b> Expert agrees to provide independent examinations of patients under section 394.467(6)(a)2., F.S. (patient in a treatment facility).	Section 27.5304, F.S. Section 29.007(5), F.S. Section 394.467(6)(a), F.S. Section 394.473(2), F.S.	<b>The patient pays for the independent evaluation, unless indigent. If indigent, JAC, PD, or Regional Counsel.</b>  The Courts do not pay for the facility employee to testify in court.
<b>Adult Competency (Forensic Services for Persons Who are Intellectually Disabled or Autistic) –</b> Expert agrees to evaluate defendants under sections 916.301-916.304, F.S., the Florida Rules of Criminal Procedure and any other relevant Florida law concerning allegations of incompetence to proceed to trial due to intellectual disabilities or autism.	Section 916.301, F.S.	<b>Court</b>
<b>Adult Competency (Forensic Services for Persons Who are Intellectually Disabled or Autistic) – Violation of Conditional Release</b>	Section 916.304(2), F.S.	<b>Court, if needed</b> <i>(Current statutes says that the court shall hold a hearing but is silent to who pays. In practice, the courts may pay.)</i>

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<p><b>Developmental Disabilities Examining Committee</b> – Expert agrees to act as a Developmental Disabilities Committee member to determine intellectual disabilities pursuant to section 393.11, F.S.</p>	<p>Section 393.11(5)(g), F.S.</p>	<p><b>County</b> <i>(In practice, the courts may pay.)</i> From General Revenue fund of county in which the subject of the exam resided when the petition was filed. <b>Court</b> determines the reasonableness of the fees.</p>
<p><b>Guardianship Examining Committee</b> – Expert agrees to act as Guardianship Examining Committee member in cases filed pursuant to section 744.331, F.S.</p>	<p>Section 744.331(7)(b), F.S.  The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or if the ward is indigent, by the state.</p>	<p><b>State, if ward’s estate cannot pay</b> <i>(In practice, the courts may pay.)</i>  <b>Petitioner, if the court finds the petition was filed in bad faith, through cost recovery to the court.</b>  <b>Statewide Public Guardian Office</b> A public guardian will be provided only to those persons who needs cannot be met through less restrictive means of intervention, and may also serve in the capacity of a limited guardian or guardian advocate. 2016 legislation expands the use of public guardians.</p>
<p><b>Juvenile Competency (Mental Illness)</b> – Expert agrees to evaluate juvenile defendants under section 985.19(1)(b), F.S., Florida Rules of Juvenile Procedure 8.095(c), and any other relevant Florida law for determinations of competency to proceed.</p>	<p>Section 985.19(1)(b), F.S.  All determinations of competency shall be made at a hearing, with findings of fact based on an evaluation of the child’s mental condition made by not less than two nor more than three experts appointed by the court.  Rule 8.095(c), Florida Rules of Juvenile Procedure</p>	<p><b>Court, if needed</b> <i>(Current statute requires the fees to be taxed as costs in the case but is silent as to who pays. In practice, the courts may pay.)</i>  For experts appointed by the court only for the determination of competency. If the expert addresses issues related to sanity as an affirmative defense, the court only pays for that portion of the fees related to competence.</p>
<p><b>Juvenile Competency (Intellectual Disability or Autism)</b> – Court orders the Agency for Persons with Disabilities to examine the child</p>	<p>Section 985.19(1)(e), F.S.  For incompetency evaluations related to intellectual disability or autism, the court shall order the Agency for Persons with Disabilities to examine the child to determine if the child meets the definition of “intellectual disability” or “autism” in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.</p>	<p><b>Agency for Persons with Disabilities (APD)</b> <i>(Current statute states that the court shall order the APD to examine the child, which may suggests that the APD should bear the responsibility for payment. However, the statute states that the provisions of this section shall be implemented only subject to specific appropriations. APD reports that they do not have staff or appropriation for these exams. Until resolved, the courts may pay.)</i></p>

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<p><b>Ordinary Witnesses –</b> Including, but not limited to witnesses in civil traffic cases.</p>	<p>Section 40.29(1), F.S.</p>	<p><b>The party calling the witness, if not indigent. If indigent, JAC, SA, PD or Regional Counsel, as provided in s. 29.005, 29.006, and 29.007</b> JAC forwards funds to the clerks of court to pay for ordinary witnesses from state funds appropriated for this purpose.</p>
<p><b>Traffic Court</b></p>	<p>Section 92.143, F.S.</p>	<p><b>Party who secures the attendance of witness.</b>  <b>State Attorney</b> If the witness is required to testify on behalf of the prosecution.</p>
<p><b>Local Ordinance Violations</b></p>	<p>Section 27.54(2), F.S.</p>	<p><b>County or Municipality</b> Person charged with offense, if entering a plea of guilty or no contest or if found to be in violation or guilty, shall be assessed fees for services of a PD or regional counsel and other costs and fees paid by the county or municipality. Fees recovered shall be forwarded to the applicable county or municipality as reimbursement, for services provided.</p>
<p><b>Jimmy Ryce Act Cases</b></p>	<p>Sections 394.910-394.932, F.S.</p>	<p><b>JAC</b></p>
<p><b>Intellectual disability as a bar to the death penalty –</b> Defense counsel asserts the limitation on the availability of the death penalty on an intellectually disabled persons.</p>	<p>Section 921.137, F.S.</p>	<p><b>Court, if needed</b> <i>(Current statute requires the court to appoint experts but is silent as to who pays. In practice, the courts may pay.)</i></p>