

IN THE CIRCUIT COURT IN THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER, MARTIN, ST. LUCIE AND OKEECHOBEE COUNTIES
STATE OF FLORIDA

ADMINISTRATIVE ORDER 2017-10

**RE: SELECTION AND PAYMENT OF
COURT-APPOINTED EXPERT WITNESSES**

Whereas, the Florida Supreme Court in Administrative Order 17-12 has provided general recommendations, standards of operation, and best practices as a means of to improve service delivery in the use of court appointed expert witnesses;

Whereas, each circuit is required to select court-appointed expert witnesses from a registry maintained by the circuit; and

Whereas, each circuit is to implement the mandatory statewide rate structure for court-appointed expert witnesses by July 1, 2017; and

Whereas, in order to comply with the and facilitate the recommendations of AOSC 17-12, it is necessary that the Nineteenth Judicial Circuit establish local policies and procedures for the selection and payment of court-appointed expert witnesses to conduct certain evaluations that are statutorily required to be paid by the Circuit using local due process funds; and

Now, therefore, I, Elizabeth A. Metzger, in accordance with AOSC 17-12 and pursuant to the authority vested in me as Chief Judge of the Nineteenth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, do hereby order as follows:

I. Court-Appointed Expert Witness Registry; Application; Contract

The Office of the Court Administrator (Court Administration) shall maintain a Court-Appointed Expert Witness Registry (Registry) of expert witnesses by field of expertise who shall be appointed on a rotating basis. Except as otherwise provided in this Administrative Order, an expert must be included on the Registry in order to provide and be compensated for the provision of expert witness services by Court Administration. An expert will not be added to the Registry until he or she has been approved by the Chief Judge. In addition, every expert must enter into an expert witness services contract with Court Administration before he or she will be included on the Registry.

An expert may be added or removed from the Registry at any given time. To be added or removed, an expert must submit a request in writing to the Trial Court Administrator, 250 NW Country Club Drive, Ste. 217, Port St. Lucie, Florida 34987. A request to be added to the registry must include all contact information, such as business name, mailing address, e-mail address, phone number(s), and fax number(s). After it is determined that the expert qualifies to be added to the Registry, Court Administration will notify the expert in writing, and the expert's name will be added to the Registry.

II. Qualifications of Court-Appointed Expert Witnesses

Experts conducting court-ordered evaluations or examinations must:

- A. Meet all requirements for qualification as provided in applicable statute or court rule, and have at least three years of experience in their area of expertise.
- B. To the extent possible, the experts shall have completed forensic evaluator training and each shall be a psychiatrist, licensed psychologist, or physician pursuant to section 916.115, Florida Statutes.
- C. Possess the skills and abilities to perform the evaluations or examinations for which he or she is appointed by the court.
- D. Adhere to standards and procedures for qualifications, certifications, licensing, professional conduct, discipline, and training as established by the Florida Statutes, the Florida Supreme Court, the Office of the State Courts Administrator, the Florida Department of Professional Regulation, and any other applicable peer regulatory body.
- E. Engage in sufficient education and training, as required by applicable law and regulatory authority to maintain the current knowledge and expertise necessary to perform the evaluations and examinations for which the expert is appointed.
- F. Comply with all terms of the expert witness services contract and the Circuit's policies and procedures for billing.
- G. Perform and complete all aspects of an evaluation or examination personally and not delegate any portion of an evaluation or examination to employees, subcontractors, or agents.

- H. Not accept appointment as an expert witness in a case if acceptance would create a conflict of interest.
- I. Must withdraw from a case if the expert witness determines, either before or after initiation of evaluation or examination, that there is a conflict of interest. If a conflict is determined to exist after initiation of evaluation or examination, the expert may submit a request for partial payment for his or her services.
- J. Promptly notify the Chief Judge in writing if any grievance or complaint is filed against the expert, if the expert has been sanctioned or agreed to sanctions, or where probable cause for disciplinary action has been found.
- K. Promptly notify the Chief Judge if the expert is arrested for any crime, including a criminal traffic offense, or receives a notice to appear.
- L. Maintain professional conduct in the courtroom at all times and follow courtroom procedures established by the court.

III. Selection and Payment of Court-Appointed Expert Witnesses

In accordance with AOSC 17-12, the court shall initially appoint and pay for only one expert for an evaluation in a standard adult competency proceeding under section 916.115, Florida Statutes. If the parties stipulate to the findings of the expert, then there shall be no further appointment of experts to determine competency. If the parties do not stipulate to the findings of the first expert, the court may appoint and pay for up to two additional experts, pursuant to statute. This practice also shall apply to standard juvenile competency proceedings effective upon applicable statutory and court rule revisions.

If the court determines that a defendant should be evaluated again pursuant to Florida Rule of Criminal Procedure 3.212 or 3.213, the court shall select and pay for one expert. The Court generally will reappoint the same expert to perform the evaluation who performed the previous evaluation, provided the expert is still under contract to provide services. However, on the court's own initiative, or a motion of the State or defense showing good cause, the court may appoint a new expert by rotation from the Registry or as otherwise provided herein.

Appointment of experts shall be made in a rotating order as names appear on the Registry. In the event the expert to be appointed declines appointment, the next expert

in the rotation shall be appointed until an appointment is accepted. Court Administration will maintain a log of declined appointments. The court may make an out-of-order appointment from the Registry upon finding a finding of good cause articulated in the order of appointment.

Appointment of an expert who is not on the Registry may be made in the event an appropriate expert is not available within the Nineteenth Judicial Circuit or for other good cause. The court may appoint expert witnesses from another circuit's registry of court-appointed expert witnesses if the appropriate expert is not available within the Nineteenth Judicial Circuit. Court Administration will maintain a list of experts, their qualifications, and approved fees to share with other circuits. The order of appointment shall set forth findings to justify an off-Registry appointment. The expert will be compensated at the standard rates set forth herein, and payment of any fees in excess of the standard rates must be approved in advance as provided herein. The expert must enter into a contract to provide court-appointed expert witness services with Court Administration.

IV. Records Management; Forms; Standard Orders

Court Administration will keep all records pertaining to payment of expert witness services in accordance with generally accepted accounting principles and procedures and in such a manner as to ensure their inspection pursuant to Florida Rule of Judicial Administration 2.420 and the Judicial Branch Records Retention Schedule for Administrative Records.

Experts must execute an expert witness service contract approved by the Office of the State Courts Administrator (OSCA) which contains standardized language in areas of liability, billing procedure, qualification of experts, cancellation/termination and record retention/auditing.

The court's orders for appointment of expert witnesses shall identify factors, if applicable, that must be addressed in the expert's report. For an expert to be paid for services rendered, the expert's report and testimony must explicitly address each of the factors and follow the procedures set out in the applicable chapter of the Florida Statutes and in the applicable Florida Rules of Court. Standard orders of appointment may be developed based upon the relevant divisions of the circuit court.

V. Funding and Payment

Funding for expert witness services is contingent upon an annual appropriation from the Florida Legislature. If the Legislature does not appropriate funds specifically for the

purpose of funding the services or demands a spending reduction due a revenue shortfall, the court and the State will have no obligation to pay or perform under any agreement.

The rates shown in the chart below will be used in determining payment for court-appointed experts. The rates apply only to the types of evaluations described in the chart. Other types of evaluations will continue to be governed by circuit-determined rates.

Expert Witness Rate Structure

Type of Evaluation	Evaluation Flat Rate	Maximum Allowable Travel Rate	Follow-Up Evaluation Flat Rate	Maximum Allowable No Show Rate	Maximum Hourly Testimony Rate, Court Ordered (including wait time, 2-hour cap)
Adult Competency	\$500	Mileage only (\$ 12.061)	\$350	40% of Evaluation Rate	\$150
Juvenile Competency	\$350	Mileage only (\$ 12.061)	\$250	40% of Evaluation Rate	\$150
Guardianship Examining Committee		Mileage only (\$ 12.061)		40% of Evaluation Rate	
<i>PhD, M.D., D.O.</i>	\$325		\$250		\$150
<i>ARNP, RN, MSW, LPN, LCSW</i>	\$225		\$150		\$100
<i>Lay Person</i>	\$125		\$75		\$50
Developmental Disability Examining Committee		Mileage only (\$ 12.061)		40% of Evaluation Rate	
<i>PhD, M.D., or D.O.</i>	\$350		\$250		\$150
<i>ARNP, RN, MSW, LPN, LCSW</i>	\$225		\$150		\$100
<i>Lay Person</i>	\$125		\$75		\$50

VI. Billing and Payment Procedures

Experts must use the Uniform Invoice for Expert Witness Services developed by OSCA. The current Uniform Invoice is available on the Circuit's website at www.circuit19.org.

Court Administration will initiate payment procedures upon receipt of: 1) an original Uniform Invoice; 2) an original written invoice; and 3) a copy of the court's order appointing the expert as an expert witness and directing that Court Administration or the Nineteenth Judicial Circuit Court is responsible for payment of the expert's fees.

The Uniform Invoice and supporting documents must be submitted to Court Administration at 250 NW Country Club Drive, Port St. Lucie, Florida 34986 no later than one (1) calendar month following the date of service performed by the expert, otherwise financial penalties may be incurred. The Uniform Invoice and supporting documentation must be sufficiently detailed to permit proper pre- and post-audits.

VII. Procedures for Payment of Experts in Extraordinary Cases

Payments in excess of those set forth in the expert witness rate structure may be made in extraordinary cases, including but not limited to capital murder and first-degree murder cases.

An expert must immediately notify the court as soon as it is determined that additional services beyond what an expert can provide within the existing rate structure are necessary. The notification must set forth reasons as to why the particular case would require extraordinary time and effort on the part of the expert, any additional testing that is required, and the estimated number of hours needed to complete the evaluation. The notification should include a copy of the Uniform Invoice for Expert Witness Services and any relevant supporting documents. If the court determines that additional services are necessary, the court shall enter a written order that shall include findings to justify approval of payment in excess of the standard rate structure.

VIII. Judicial Monitoring of the Court-Appointed Expert Witness Registry

Court Administration will continually evaluate the performance of the experts with whom it contracts for services. Performance evaluation may include, but may not be limited to consultation with judicial divisions relative to the expert's report, timeliness of invoice submittal(s), and invoice accuracy. Upon renewal of the contract for expert

witness services, each expert must submit to a vendor background check authorization and certify that he or she continues to meet the qualifications for an expert witness.

Judges shall require that expert witnesses maintain professional conduct in the courtroom at all times and report to the Chief Judge and all appropriate authorities any unethical behavior of an expert witness.

Complaints or grievances relating to an expert witness' performance or inappropriate behavior shall be in writing and directed to the Chief Judge. Upon receipt of a complaint, the Chief Judge, or at the direction of the Chief Judge, the Trial Court Administrator shall review the complaint, any relevant documents, conduct interviews, and render a written report. If the report is written by the Trial Court Administrator, the report shall contain a recommendation to the Chief Judge as to whether the expert witness should be removed from the Registry and the contract for expert witness services terminated. The Chief Judge's report shall include a determination whether the expert witness will be removed from the Registry and his/her contract for expert witness services terminated. Written notification of any action taken by the Chief Judge will be provided to the expert witness.

IX. Effective Date

This Administrative Order shall take effect on July 1, 2017. The payment schedule for expert witnesses in Attachment "A" to Administrative Order 2009-04 Due Process Service Rates is hereby superseded by the expert witness rate structure set forth herein.

DONE AND ORDERED this 23rd day of June, 2017 at Stuart in Martin County, Florida.



ELIZABETH A. METZGER, CHIEF JUDGE