

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HARDEE, HIGHLANDS, AND POLK COUNTIES, FLORIDA

ADMINISTRATIVE ORDER NO. 1-50.4

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

WHEREAS, on February 6, 2017, the Florida Supreme Court issued AOSC17-12 *In Re: Court Appointed Expert Witness Services in Florida's Trial Courts* (hereinafter "AOSC17-12"), wherein the Florida Supreme Court stated that "[t]he 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"; and

WHEREAS, AOSC17-12 adopted all of the recommendations described in the Commission on Trial Court Performance & Accountability's (hereinafter "TCP&A") *Recommendations for the Provision of Court Appointed Expert Witness Services* (June 2014) (hereinafter "TCP&A's June 2014 recommendations") and a joint report by the TCP&A and the Trial Court Budget Commission 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* (November 2016) (hereinafter "Joint Commission's November 2016 recommendations"); and

WHEREAS, on June 22, 2018, the Florida Supreme Court issued AOSC18-17 *Adoption of Amended Expert Witness Rate Structure Chart for Court Appointed Expert Witness Services in Florida's Trial Courts* (hereinafter "AOSC18-17"); and

WHEREAS, in order to comply with and facilitate the recommendations adopted by AOSC17-12 and AOSC18-17, it is necessary for the Court to establish local policies and procedures for the selection and payment of court appointed expert witnesses to conduct certain evaluations which are statutorily required to be paid by the Court using local due process funds; and

WHEREAS, Florida Rule of General Practice and Judicial Administration 2.215(b)(3) states that the chief judge "shall, considering available resources, ensure the efficient and proper administration of all courts within [the] circuit"; and

WHEREAS, pursuant to § 43.26 Florida Statutes, the chief judge shall have the power "[t]o do everything necessary to promote the prompt and efficient administration of justice in the courts over which he or she is chief judge"; and

WHEREAS, by the power vested in the chief judge under article V, section 2(d), Florida Constitution; § 43.26, Florida Statutes; and Florida Rule of General Practice and Judicial Administration 2.215(b)(2);

NOW, THEREFORE, in compliance with AOSC17-12 and AOSC18-17, the Court ORDERS as follows:

1. Court Appointed Expert Witness Registry:

- a. The Court shall maintain a registry of expert witnesses by field of expertise (hereinafter “Court Appointed Expert Witness Registry”).
- b. The term “expert witness”, as used herein, means a qualified person providing adult competency evaluations, providing juvenile competency evaluations, serving on guardianship examining committees, serving on developmental disability examining committees, or providing any other evaluations that the Court is statutorily required to pay for.
- c. Any person seeking to be retained for expert witness services in their field of expertise, and to be compensated for the provision of such services by the Office of the Court Administrator for the Tenth Judicial Circuit Court, must be on the Court’s Court Appointed Expert Witness Registry.
- d. To be added to the Court’s Court Appointed Expert Witness Registry, an expert must submit an application to provide court appointed expert witness services (hereinafter “Registry Application”) to the Chief Judge for approval.
- e. The Registry Application, which may be revised without amendment of this Administrative Order, is posted on the Court’s website <http://www.jud10.flcourts.org/?q=admin-services-expert-witness>. The Registry Application must be completed in its entirety and must include the following:
 - i. Expert’s curricula vitae;
 - ii. Vendor Background Check Authorization; and
 - iii. any other supporting documents.
- f. An incomplete Registry Application will be returned to the applicant for completion.
- g. An expert will not be added to the Court’s Court Appointed Expert Witness Registry until they have been approved by the Chief Judge.
- h. The Chief Judge’s Judicial Assistant (hereinafter “JA”) will maintain the Court Appointed Expert Witness Registry master list. The master list shall include all approved experts, the county in which the expert agrees to be appointed, and the types of cases in which the expert agrees to be appointed. The JA shall distribute the list to the Hardee County Administrative Judge, the Highlands County Administrative Judge, the Polk County Probate/Guardianship Judge, the Polk County Clerk of the Circuit Court, and the Trial Court Administrator.

2. Selection of Court Appointed Expert Witnesses for Initial Competency Determination:

a. Appointment of Expert Witness Pursuant to § 916.115, Florida Statutes (adult competency):

1. When, upon written motion by either counsel for the defendant, a *pro se* defendant, or the State Attorney, or upon the Court's request, the Court orders an adult competency evaluation pursuant to § 916.115(2), Florida Statutes, **the Court shall select and pay for only one expert. After completion of the initial expert's evaluation, only if the Court deems it necessary, the Court may appoint an additional expert from the registry at the Court's expense.** This practice will also apply to standard juvenile competency proceedings upon applicable statutory and rule revisions.

The Court will only pay for an expert to testify in court if the expert testifies regarding competency pursuant to an order from the Court directing the expert to testify.

2. When an expert is appointed by the Court pursuant to §916.115(2), Florida Statutes, to evaluate the competence of the defendant to proceed and the defense also requests that the defendant be examined for sanity at the time of the offense, the Court will pay only for that portion of the expert's fees relating to the evaluation of competency to proceed at the rate established in this Administrative Order and the defense will be responsible for the sanity portion of said evaluation.

b. Appointment of Expert Witness Pursuant to § 916.301, Florida Statutes (adult competency – intellectual disability or autism):

When, pursuant to §916.301, Florida Statutes, the Court orders an adult competency evaluation for a defendant whose suspected mental condition is intellectual disability or autism, the Court shall select and pay for one expert to evaluate the defendant. The Court shall also appoint the Agency for Persons with Disabilities. The Court shall be responsible for payment of the evaluation and testimony by its appointed expert.

3. Selection of Court Appointed Expert Witnesses for Follow-up Competency Evaluation:

If a person has previously been evaluated during the pendency of their case and a judge later determines that the person should be re-evaluated for follow-up competency determination (less than one year from the initial evaluation), the judge shall appoint the same expert that conducted the first evaluation to conduct the follow-up re-evaluation. The order of appointment **must** state that the person is being re-evaluated for follow-up competency determination.

4. Court Appointed Expert Witness Registry Rotation:

- a. Court appointed experts that the Court is responsible to pay must be selected from the Court's Court Appointed Expert Witness Registry and shall be made in a rotating order as the names appear on the registry.

- b. Maintenance of the Rotating Registry List:
 - i. The Hardee County Administrative Judge shall be responsible for maintaining the rotating list of experts for appointment in Hardee County cases.
 - ii. The Highlands County Administrative Judge shall be responsible for maintaining the rotating list of experts for appointment in Highlands County cases.
 - iii. The Polk County Probate/Guardianship Judge shall be responsible for maintaining the rotating list of experts for appointment to guardianship examining committees and developmental disability committees in Polk County cases.
 - iv. The Polk County Clerk of the Circuit Court shall be responsible for maintaining the rotating list of experts for appointment to evaluate adult and/or juvenile competency in Polk County cases.
 - v. The Office of the Trial Court Administrator shall be responsible for maintaining the rotating list of experts for appointment for all other evaluations that the Court is statutorily required to pay for.
- c. A judge may make an out of order appointment only upon a finding of good cause articulated in the order of appointment.
- d. If an appointment is declined by an expert, the next expert in the rotation shall be appointed until an appointment is accepted.
- e. A log will be maintained of out of order appointments tracking both good cause and declined appointments.

5. Court Appointed Expert Witnesses shall:

- a. As qualified, perform competency evaluation services in criminal cases; perform pretrial forensic evaluations; perform evaluations for the purpose of departure hearings, involuntary hospitalization or continued commitment and placement; perform psychological evaluations in juvenile cases; perform evaluations to determine developmental disability or autism; or perform examinations of alleged incapacitated person(s) in guardianship cases.
- b. Possess the skills and abilities to perform the evaluations or examinations for which the expert witness is appointed by the Court.
- c. Not accept appointment as an expert witness if acceptance of a case would create a conflict of interest.
- d. Immediately withdraw from a case if the expert witness determines, either before or after the expert has initiated an evaluation or examination, that there is a conflict of interest. If

the evaluator has begun an evaluation or examination in the case prior to determining the conflict of interest and withdrawing from the appointment, they may file a motion for partial payment. The motion for partial payment will be heard by the Chief Judge or the Chief Judge's designee.

- e. Perform professional services for which the expert witness is appointed to the best of their ability.
- f. Perform and complete all aspects of an evaluation or examination personally within the geographical location of the Tenth Judicial Circuit (Polk, Highlands, and Hardee Counties), and not delegate any portion of the evaluation or examination to his/her employees, subcontractors, or agents. This provision shall not apply to the expert witness using the services of an employee, subcontractor, or agent to prepare the typewritten report of the evaluation or examination as long as the expert witness personally reviews and signs the written report prior to its submission to the Court. The written report must be received by the appointing judge no later than 48 hours prior to the applicable hearing. Written reports must be mailed or hand-delivered.
- g. If a psychologist, the psychologist must comply with the Specialty Guidelines for Forensic Psychologists, American Psychological Association, (2013), *American Psychologist*, 68(1), 7-19.
- h. Adhere to standards and procedures for qualifications, certification, professional conduct, discipline, and training as established by the Florida Statutes, the Florida Supreme Court, the Florida Department of Professional Regulation, and any other applicable peer regulatory bodies.
- i. As applicable, complete forensic evaluator training approved by the Florida Department of Children and Families pursuant to §916.115(1)(a), Florida Statutes.
- j. Engage in sufficient education and training, as required by applicable law and the expert witness' regulatory authority, to maintain current knowledge and experience required to perform the evaluations and examinations for which the expert witness is appointed to perform by the Court.
- k. Immediately notify the Chief Judge of any grievance filed against the expert witness, if the expert witness has been sanctioned, has agreed to sanctions, or where probable cause has been found. The notification to the Chief Judge shall also include any complaint and the outcome of the grievance or complaint by the expert witness' regulatory authority.
- l. Immediately notify the Chief Judge if the expert witness is arrested for any crime, including a criminal traffic offense, or receives a Notice to Appear.
- m. Follow courtroom procedures set forth by the Court.
- n. Maintain professional conduct in the courtroom at all times.

- o. Dress in accordance with courtroom standards.
6. Payment of Expert Witnesses (When the Court is Responsible for Payment):
- a. Standard Rate Fee Structure: The standard rate fee structure is attached and incorporated herein as “Attachment A”.
 - b. Billing Procedure:
 - i. Expert witnesses must utilize the Uniform Invoice for Expert Witness Services (hereinafter “Uniform Invoice”) developed by the Office of the State Courts Administrator. The current Uniform Invoice may be found on the Court’s website at <http://www.jud10.flcourts.org/?q=admin-services-expert-witness>.
 - ii. Experts must have a court order appointing them as an expert witness in each case. Experts must also have a court order directing them to testify in order to be compensated by the Court for testimony regarding competency.
 - iii. Uniform Invoices and supporting documents must be submitted to the Court’s Administrative Services Department at P.O. Box 9000, Drawer J-150, Bartow, Florida, 33830.
 - iv. The Court’s Administrative Services Department will initiate payment procedures upon receipt of: 1) an original Uniform Invoice; and 2) a copy of the order appointing the expert as an expert witness and directing that “Court Administration” or the “Tenth Judicial Circuit Court” is responsible for payment of the expert’s fees.
 - v. The Uniform Invoice and supporting documents must be submitted no later than the calendar month following the date of service. The Uniform Invoice and supporting documents must be submitted in detail sufficient for a proper pre- and post-audit.
 - vi. The Uniform Invoice must include: 1) the contract number (if the expert has a contract with the Tenth Judicial Circuit for the provision of the services contemplated by this Administrative Order); 2) the nature of the services performed; 3) the identity of the expert performing the services; 4) the amount of time expended in performing the service per case (including the start and end times); 5) an invoice number (invoice number may be up to nine characters); 6) and the appropriate vender identification number (FID # or SSN#).
 - vii. No Uniform Invoice will be paid without an accompanying order directing that “Court Administration” or the “Tenth Judicial Circuit Court” is responsible for payment of the expert’s fees. Invoices will be returned to the Evaluator, the defense counsel, or the requesting party if a proper accompanying order is not included with the invoice.
 - viii. Any Uniform Invoice received by the Court with an accompanying order indicating that any another entity (i.e., “the County”, “the Board of County Commissioners”,

“JAC”, or “the Justice Administrative Commission”) is responsible for payment will be returned to the expert witness, the defense counsel, or the requesting party.

- ix. Uniform Invoices that must be returned to the expert witness due to preparation errors will result in a delay in payments.
- c. Procedure for Payment of Experts in Extraordinary Cases (including, but not limited to, capital murder and first-degree murder cases):
 - i. The Court recognizes that there may be cases that require unusual and extraordinary effort on behalf of the expert witness. In such cases, the standard rate structure may be exceeded upon prior approval by the Chief Judge.
 - ii. Before an expert may be compensated in excess of the standard rate structure, a motion must be filed by counsel or self-represented litigant requesting to exceed the Court’s standard rate structure. The motion must include reasons that the particular case requires unusual and extraordinary effort on behalf of the expert witness. The motion must also include a copy of the Uniform Invoice and any supporting documents.
 - iii. The motion must be filed in the case that the expert witness was appointed and must be served on the parties to the case.
 - iv. The motion shall be heard by the Chief Judge or the Chief Judge’s designee.
 - v. The Chief Judge or the Chief Judge’s designee shall enter a written order with findings detailing the unusual and extraordinary efforts required on behalf of the expert witness to comply with the appointment.

7. Judicial Monitoring of Court’s Court Appointed Expert Witness Registry:

a. Complaints:

Any person may make a complaint of inappropriate behavior or performance issues involving a court appointed expert witness to the Chief Judge. Upon receipt of a complaint, the Chief Judge (or the Trial Court Administrator at the Chief Judge’s direction) shall review the complaint, review relevant documents, conduct interviews, and render a written report. The Chief Judge’s report shall determine whether or not the expert witness will be removed from the Court’s Court Appointed Expert Witness Registry. If the written report is completed by the Trial Court Administrator, it shall include a recommendation to the Chief Judge of whether or not the expert witness should be removed from the Court’s Court Appointed Expert Witness Registry.

b. Court Appointed Expert Witness Evaluation Committee:

A Court Appointed Expert Witness Evaluation Committee (hereinafter “Expert Witness Committee), comprised of the Trial Court Administrator (Chair), a circuit judge, a county

judge, the Chief Deputy Trial Court Administrator, the Administrative Services Director, and the General Counsel, is hereby created to evaluate the performance of the expert witnesses on the Court's Court Appointed Expert Witness Registry. Judges shall report any instance of an expert witnesses not maintaining professional or ethical conduct in the courtroom to the Chair, the Chief Judge, and any other appropriate authority. The Expert Witness Committee may recommend to the Chief Judge that an expert witness be removed from the Court's Court Appointed Expert Witness Registry.

c. Yearly Certification:

Once admitted to the Court's Court Appointed Expert Witness Registry, an expert witness must certify to the Chief Judge on a yearly basis that they continue to meet all statutory qualifications and requirements for court appointment as an expert witness.

8. Effective Date:

This Administrative Order is effective immediately and VACATES and SUPERCEDES Administrative Order No. 1-50.3, entered on June 26, 2023.

DONE and ORDERED on this 18th day of June, 2024.

s/James A. Yancey, Chief Judge

Original:

Polk County Clerk of Courts

Copies:

All Judges

Polk County Clerk of Courts

Highlands County Clerk of Courts

Hardee County Clerk of Courts

Office of the State Attorney

Office of the Public Defender

Office of Criminal Conflict and Civil Regional Counsel, 2nd District Region

Justice Administrative Commission

Electronic Bar Mailing

ATTACHMENT A

STANDARD RATE FEE STRUCTURE

Standard Rate Fee Structure

Type of Evaluation	Flat Rate for Evaluation	Maximum Allowable Travel Rate	Flat Rate for Follow-up Evaluation <i>(With same expert)</i>	Maximum Allowable No Show Rate	Maximum Hourly Testimony Rate, Court Ordered <i>(including wait time, 2-hour cap)</i>
Standard Adult Competency (s. 916.12, F.S. & s. 916.301-304, F.S.)					
Mental Competency to Proceed	\$500	mileage only (F.S. §112.061)	\$350	40% of evaluation rate	\$150
Standard Juvenile Competency (s. 985.19(1)(d), F.S. & s. 985.19(1)(e), F.S.)					
Mental Competency to Proceed	\$350	mileage only (F.S. §112.061)	\$250	40% of evaluation rate	\$150
Guardianship Examining Committee (s. 744.331, F.S.)					
Ph.D., M.D., or D.O.	\$350	mileage only (F.S. §112.061)	\$250	40% of evaluation rate	\$150
ARNP, RN, MSW, LPN, LCSW, or Lay Person	\$250	mileage only (F.S. §112.061)	\$175	40% of evaluation rate	\$150
Developmental Disability Examining Committee (s. 393.11(5)(g), F.S.)					
Ph.D., M.D., or D.O.	\$350	mileage only (F.S. §112.061)	\$250	40% of evaluation rate	\$150
ARNP, RN, MSW, LPN, LCSW, or Lay Person	\$250	mileage only (F.S. §112.061)	\$175	40% of evaluation rate	\$150
All other evaluations that the Court is statutorily required to pay for.					
Ph.D., M.D., or D.O.	\$350	mileage only (F.S. §112.061)	\$250	40% of evaluation rate	\$150
ARNP, RN, MSW, LPN, LCSW, or Lay Person	\$250	mileage only (F.S. §112.061)	\$175	40% of evaluation rate	\$150

- i. Flat rates are inclusive of exam/evaluation, collateral interviews (including, but not limited to, collateral interview with parent or guardian), “out of court services”, and travel time.
- ii. “Out of court services” includes, but is not limited to, preparation, consultation, report writing, record review, and test scoring.
- iii. For purposes of this Administrative Order, secondary evaluations conducted by the same expert shall be considered “follow-up” evaluations. “Follow-up” evaluations are inclusive of exam/evaluation, collateral interviews (including, but not limited to, collateral interview with parent or guardian), and “out of court services”.
- iv. If a scheduled evaluation is cancelled with less than 24 hours’ notice to the Expert Witness before the scheduled evaluation, the Expert Witness may be compensated at the rate for a “no show”.
- v. The Court does not pay for sanity examinations. If an expert is appointed by the Court to conduct a competency and a sanity examination simultaneously, the Court will not pay more than the maximum rates allowed for competency evaluation listed in the above chart.
- vi. Expert witnesses will not be compensated for any travel time.
- vii. Expert witnesses will only be compensated for mileage as authorized in §112.061, Florida Statutes.
- viii. Payment amounts higher than the rates listed in the above chart are allowable in **extraordinary circumstances** with prior approval by the Chief Judge or the Chief Judge’s designee by following the procedure set forth in Section 4. c. of this Order; however, documentation of reason must be included in motion and invoice.
- ix. The hourly rate for all activities related to testimony is \$150 per hour with a two-hour cap. The capped hourly rate for testimony includes wait time.