

Supreme Court of Florida

No. AOSC18-17

IN RE: ADOPTION OF AMENDED EXPERT WITNESS RATE
STRUCTURE CHART FOR COURT APPOINTED EXPERT
WITNESS SERVICES IN FLORIDA'S TRIAL COURTS

ADMINISTRATIVE ORDER

In 2017, this Court issued In Re: Court Appointed Expert Witness Services in Florida's Trial Courts, Fla. Admin. Order No. AOSC17-12 (Feb. 2, 2017), which adopted the report *Expert Witnesses in Florida's Trial Courts*.¹ The report identified factors affecting the cost of providing expert witness services and recommended comprehensive fiscal and operational solutions for the management of expert witness services, including a statewide rate structure for the payment of certain types of evaluations. The standards and best practices codified in the administrative order have generated cost savings across the state and have improved the delivery of expert witness services provided in the trial courts in Florida.

1. Available at <http://www.flcourts.org/core/fileparse.php/574/urlt/ExpertWitnessesinFloridasTrialCourtsReportandAppendices2016.pdf>.

The judicial branch continues to examine budgetary issues related to due process services, recently revisiting components of the expert witness rate structure implemented in AOSC17-12. Accordingly, based on feedback from trial courts around the state and recommendations from the Trial Court Budget Commission and the Commission on Trial Court Performance and Accountability, we are issuing a revised statewide rate structure chart that was included in AOSC17-12, to specify the types of evaluations and provide clarifications to the current chart. Most notably, the new chart identifies adult and juvenile mental illness and intellectual disabilities or autism competency exams in the respective standard competency rate category, while allowing the payment of exams exceeding this rate with supporting extraordinary circumstance documentation. Other changes include: making the hourly testimony rate for standard juvenile competency match the rate set for standard adult competency; making clear in a notation on the chart that payment amounts higher than the rates listed in the chart are allowable in extraordinary circumstances, with prior approval by the court and with the reason documented in orders and invoices; and clarifying that payment of certain travel expenses is permissible but that payment of travel time is not.

The Court hereby adopts the revised statewide rate structure chart in section V. Funding/Payment of the attached Expert Witness General Recommendations,

Standards of Operation and Best Practices. The remainder of the document is unchanged. The new rate structure is effective upon signing of this order.

DONE AND ORDERED at Tallahassee, Florida, on June 22, 2018.

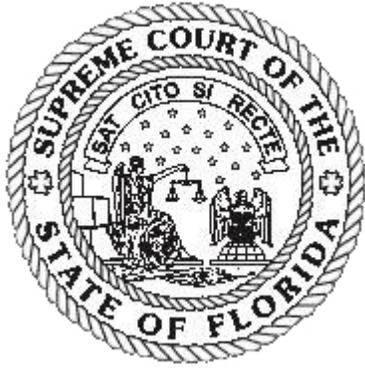
Jorge Labarga
AOSC18-17 6/22/2018

Chief Justice Jorge Labarga
AOSC18-17 6/22/2018

ATTEST:

John A. Tomasino
AOSC18-17 6/22/18

John A. Tomasino, Clerk of Court
AOSC18-17 6/22/18



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

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

II. MANAGEMENT PRACTICE

A. Forms/Records Management	<p><i>Standards of Operation</i></p> <ol style="list-style-type: none"> 1. Circuits shall use the Uniform Invoice for Expert Witness Services developed by the Office of the State Courts Administrator. 2. Circuits’ standard orders of appointment shall identify factors, if applicable, that must be addressed in the expert witness’ report. 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.
	<p><i>Best Practices</i></p> <ol style="list-style-type: none"> 1. Circuits should audit invoices prior to submission to ensure compliance with the approved fee schedule. 2. Circuits should share forms and guidelines developed locally, regarding the provision of expert witness services, with other circuits, if requested. 3. Circuits should track the number of evaluations per case and defendant.
B. Contracts with Expert Witnesses	<p><i>Standard of Operation</i></p> <ol style="list-style-type: none"> 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.

	<p>Best Practices</p> <ol style="list-style-type: none"> 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. 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. 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.”
C. Registry of Expert Witnesses	<p>Standard of Operation</p> <ol style="list-style-type: none"> 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.
	<p>Best Practice</p> <ol style="list-style-type: none"> 1. Circuits should maintain a list of approved experts, their qualifications, and the approved fees, to share with other circuits, if requested.
III. JUDICIAL APPOINTMENTS/MONITORING	
A. Evaluation and Retention of Expert Witnesses	<p>Standard of Operation</p> <ol style="list-style-type: none"> 1. Each circuit shall continually evaluate the performance of the expert witnesses that it contracts with or employs.
B. Issues with Expert Witnesses	<p>Standards of Operation</p> <ol style="list-style-type: none"> 1. Circuits shall have procedures for dealing with inappropriate behavior, complaints, or performance issues of expert witnesses. 2. Judges shall require that expert witnesses maintain professional conduct in the courtroom at all times. 3. Judges shall report to the appropriate authorities any unethical behavior of an expert witness.
	<p>Best Practice</p> <ol style="list-style-type: none"> 1. Circuits should consider convening a committee to address complaints and grievances regarding a court approved expert witness.
IV. EDUCATION	
<p>General Recommendations to the Florida Court Education Council</p> <ol style="list-style-type: none"> 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. 2. Within the appropriate bench books (i.e., criminal, mental health, etc.), consider adding a chapter regarding the use of expert witnesses. 3. Presentations to judges pertaining to expert witness services should be included periodically at judicial conferences. 4. Presentations regarding the use of expert witnesses should be included in some appropriate way at the Florida Judicial College. 5. Presentations regarding the use of expert witnesses via webinars should be considered as an alternative to traditional in-person educational opportunities. 	
<p>Standards of Operation</p> <ol style="list-style-type: none"> 1. Circuits shall keep on file the curricula vitae of the expert witnesses who have been approved for inclusion in the registry. 2. The Office of the State Courts Administrator shall provide education to court administration staff on invoice use and Uniform Data Reporting system input. 	

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 ¹	Travel ²	Range of Allowable Follow-up Evaluation Rates (With same expert) ¹	Maximum Allowable No Show Rate ¹	Maximum Hourly Testimony Rate, Court Ordered (Including wait time, 2 hour cap) ³
Standard Adult Competency (s. 916.12, F.S. & s. 916.301-304, F.S.)					
Mental Competence to Proceed	\$300-\$500	Mileage and Per Diem only	\$200-\$350	40% of Evaluation Rate	\$150 per hour
Standard Juvenile Competency (s. 985.19(1)(d), F.S. & s. 985.19(1)(e), F.S.)					
Mental Competence to Proceed	\$250-\$350	Mileage and Per Diem only	\$175-\$250	40% of Evaluation Rate	\$150 per hour
Guardianship Examining Committee (s. 744.331, F.S.)					
<i>Ph.D., M.D., or D.O.</i>	\$250-\$350	Mileage and Per Diem only	\$175-\$250	40% of Evaluation Rate	Rates to be determined by circuit
<i>ARNP, RN, MSW, LPN, LCSW, Lay Person</i>	\$75-\$250		\$50-\$175	40% of Evaluation Rate	
Developmental Disability Examining Committee (s. 393.11(5)(g), F.S.)					
<i>Ph.D., M.D., or D.O.</i>	\$250-\$350	Mileage and Per Diem only	\$175-\$250	40% of Evaluation Rate	Rates to be determined by circuit
<i>ARNP, RN, MSW, LPN, LCSW, Lay Person</i>	\$75-\$250		\$50-\$175	40% of Evaluation Rate	

Note: Payment amounts higher than the rates listed in the chart are allowable in **extraordinary circumstances** with prior approval by the court; however, documentation of reason must be included in orders and invoices.

¹Allowable rates are based on a flat per-evaluation rate. The flat rate is designed to include the performance of the evaluation as well as any travel time or preparation time associated with the evaluation.

²Compensation for travel time is not permitted under the rate structure; however, mileage and per diem are allowable pursuant to section 112.061, F.S.

³The structure sets the hourly rate for all activities related to testimony in Standard Adult and Juvenile Competency evaluations, including wait time, at \$150 per hour with a two-hour cap. Testimony-related rates for other types of evaluations are left to the circuit to determine based on the type of expert testifying.

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.