

## **Appointment of Forensic Evaluators Policies and Procedures**

It is the policy of the Santa Clara County Superior Court that the appointment of forensic evaluators and receipt of reports shall include and be limited to the following:

### **1. FORENSIC EVALUATOR INFORMATION AND RESOURCES**

Immediately upon appointment of a psychiatrist or psychologist to the Court's list, the Court Forensic Evaluator Program Coordinator will provide the evaluator with the following:

- a. A letter confirming the evaluator's appointment to the Santa Clara County Criminal Division Forensic Evaluator Panel and/or Juvenile Justice Division Forensic Evaluator Panel.

The evaluator should be familiar with the following documents located on the Court's Forensic Evaluator Resources website:

- a. The Standards for Report Content and a sample of the standard report format required for use in this Court.
- b. Invoicing instructions and invoicing forms.
- c. The Forensic Evaluator Manual for practice within the Santa Clara County Superior Court.

The Court Forensic Evaluator Program Coordinator will request a username and password to be assigned to the evaluator for online report submission.

### **2. THE ADVISORY REVIEW PANEL**

- a. The Presiding Judge of the Superior Court, upon recommendation of the Supervising Judge of the Criminal Division and the Supervising Judge of the Juvenile Division, shall appoint an Advisory Review Panel to monitor and measure report quality and timeliness.
- b. The panel shall be comprised of:
  - (1) The Supervising Judge of the Juvenile Justice Division of the Superior Court of California, County of Santa Clara
  - (2) The Judge of the Criminal Division of the Superior Court of California, County of Santa Clara, assigned to the 1368 calendar;
  - (3) A psychologist-representative of the Santa Clara County Psychological Association;
  - (4) A representative from the Court's Criminal Justice Division;
  - (5) A representative from the Court's Juvenile Justice Division;
  - (6) A representative from the Office of the District Attorney;
  - (7) A representative from the Office of the Public Defender;
  - (8) A representative from the Alternate Defender Office;

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- (9) A representative from the Independent Defense Office;
  - (10) A representative from the Probation Department; adult and/or juvenile; and
  - (11) A representative from the Mental Health Department.
- c. The panel will meet semi-annually.
- d. The panel shall be responsible for making recommendations concerning the following:
- (1) Appointment of Forensic Evaluators to the Court's List. Such recommendations shall be based on credentials, experience, and the minimum standards for Forensic Evaluators defined at Section 4 herein;
  - (2) Semi-annual reports on the quality and timeliness of reports being received;
  - (3) Terminations from the list due to consistently late reports or deficiency in report quality;
  - (4) Review and recommend for updates to policy and procedure documents; and
  - (5) Review and recommend for updates to the online content for the forensic evaluator page on the court's website.
- e. The Court Forensic Evaluator Program Coordinator shall provide staff support for the Advisory Review Panel.
- (1) Support staff shall maintain a file on each court appointed evaluator that shall include the evaluator's application package, timeliness tracking, any late report memorandum and any complaints concerning the evaluator's performance and/or timeliness.
  - (2) Support staff for the Criminal Division shall coordinate with the supervisor of the Juvenile Justice Division to ensure that all relevant information is included in the file provided to the Advisory Review Panel at the time and place scheduled for the annual review of the Forensic Panel Evaluators.

### **3. APPLICATION, APPOINTMENT AND TERMINATION FROM THE LIST**

Application for appointment to the Court's List shall be by the following procedure:

- a. Any applicant wishing appointment to the Court's List of Forensic Evaluators shall submit his/her resume, a complete application form (provided by the Court), redacted sample reports, and other supporting documentation listed in Section 4 to the Court Forensic Evaluator Program Coordinator.

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- b. If a personal appearance of the applicant before the Review Panel is desired by the Panel, arrangements will be made by the Court Forensic Evaluator Program Coordinator.
- c. After thorough review, the Advisory Review Panel shall make its recommendation in writing to the Supervising Judge of the Criminal Division or the Supervising Judge of the Juvenile Justice Division.
- d. Based on these recommendations, the Supervising Judge will make his/her recommendation to the Presiding Judge who will make the appointment in his/her discretion.
- e. If the recommendation is negative, and the applicant is not appointed to the List, he/she shall be provided with a written response outlining the reasons for negative recommendation and non-appointment.

Termination from the list may occur for consistently late reports; consistent and/or substantive report deficiencies, or at the discretion of the Presiding Judge based on the needs of the Court.

#### **4. MINIMUM STANDARDS FOR FORENSIC EVALUATORS**

Outlined below are the minimum qualification requirements for appointment of Forensic Evaluators to the Court's Appointed List. In addition, all evaluators appointed to the list must adhere to the policies set forth by the Boards of Psychology and Medicine, the Ethical Principles of Psychologists and Code of Conduct set forth by the American Psychological Association, and the Ethics Guidelines for the Practice of Forensic Psychiatry from the American Academy of Psychiatry and the Law.

##### **a. Psychiatrists**

The applicant:

- (1) Must possess an M.D. from an accredited medical school;
- (2) Must be licensed by the State of California as a Medical Doctor;
- (3) Must have completed a minimum of three years residency in psychiatry, and have received certification from the American Board of Psychiatry. (Forensic Evaluators who are already members of the Panel but who have not received certification will be exempted from this requirement)
- (4) After residency, must have a minimum of five years post-graduate experience in the diagnosis and treatment of emotional and mental disorders;
- (5) Must have proficiency in report writing;
- (6) Must be familiar with the applicable code sections and Forensic Evaluator Manual.

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### **b. Psychologists**

The applicant:

- (1) Must possess a Ph.D. in Psychology from an accredited college or university;
- (2) Must be licensed by the State of California as a Psychologist;
- (3) Must have a minimum of five years post-graduate experience in the diagnosis and treatment of emotional and mental disorders;
- (4) Must have proficiency in report writing;
- (5) Must be familiar with the applicable code sections and Forensic Evaluator Manual.

### **c. Special Juvenile Considerations**

The applicant:

- (1) Must be knowledgeable in child and adolescent development
- (2) Must have 2000 hours of direct clinical oversight with the target population.
- (3) Must have a minimum of two year clinical experience working with children and/or adolescents within the last 5 years.
- (4) Must have a minimum of two year experience administering, scoring, and interpreting neuropsychological and psychological assessments.

## **5. TIME STANDARDS FOR RECEIPT OF EVALUATOR'S REPORT**

### **a. Adult Division: Incompetent to Stand Trial (PC 1368, PC 1369)**

Appointments for 1368s are made in one of two ways: Non-Clinic or Clinic Interviews. The Clinic Interviews are conducted in Department 24 following the arraignment calendar on Monday afternoons.

- (1) **Non-Clinic Appointments:** The courtroom clerk shall mail the evaluator an appointment packet. The report is to be received no later than 25 calendar days and calendared for no later than 30 calendar days from the date of appointment
- (2) **Clinic Appointments:** When an evaluator is appointed by the Court on the After Arraignment Calendar for a "Clinic Interview" in Department 24 of the Superior Court, the courtroom clerk shall provide an appointment packet and the interview shall be conducted in that department on the following Monday and the case shall be calendared 21 calendar days from the date of appointment. The report

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is to be received no later than 20 calendar days from the date of appointment.

- (3) An evaluator submitting a late report shall fax or email a memorandum to the Court Forensic Evaluator Program Coordinator specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court's file for that evaluator.
- (4) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the courtroom clerk immediately. The courtroom clerk shall notify the Supervising Criminal Division Judge, the evaluator's appointment will be vacated and another evaluator on the list will be appointed. The courtroom clerk will advise the defense attorney and the district attorney that the appointment has been vacated and another evaluator appointed.
- (5) Date of evaluator appointments, date appointment packet mailed (Non-Clinic) or provided (Clinic), requests for additional time, and receipt of report dates will be tracked by the Court Forensic Evaluator Program Coordinator and made available to court staff as needed.

### **b. Juvenile Division: Competency Reports**

- (1) Seventeen calendar days from the date of the order appointing the evaluator, the competency report will be delivered to the court. The report will be circulated to the parties via an "Ex Parte Review - Receipt of Psychiatric Report" which will be on calendar 18 calendar days from the date of the order appointing the evaluator. The matter will be calendared twenty calendar days from the date of the order appointing the evaluator for a "Parte Competency Review."
- (2) When a doubt as to competency is declared, the court should appoint a separate Court-Appointed Competency Evaluator to render an opinion on the issue of competency, even if the §1017 evaluator was previously appointed by the Court. Regardless of the panel an evaluator is assigned to, an evaluator may only prepare one report per minor.
- (3) An evaluator submitting a late report shall fax or email a memorandum to the Juvenile Division supervisor or lead specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court's file for that evaluator.

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- (4) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame, has previously prepared a report for the minor, or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will vacate the appointment and another evaluator on the list will be called.
- (5) Date of evaluator appointments, date appointment packet mailed, requests for additional time, and receipt of report dates will be tracked by the supervisor or lead and made available to court staff as needed

### **c. Adult Division: EC 1017**

Defense Counsel will submit to the Court a Declaration and Order re Appointment of Evaluator pursuant to EC 1017. If the evaluation is so ordered, Counsel will call Court Services (408) 808-6800 to obtain the name of the next evaluator on the list. This name will be entered on the Court Order. Appointment of evaluators shall be made on a rotational basis.

- (1) Upon receipt of the letter and appointment packet, the evaluator shall contact the defense attorney to determine the timeline for receipt of report. The time for receipt of report shall not exceed 20 court days.
- (2) Upon receipt from a defense attorney of an order granting a motion for appointment of a forensic evaluator under 1017 of the Evidence Code, the Clerk's Office shall file/retain the original order.
- (3) Counsel will mail a certified copy of the order of appointment along with copy of the police report to the evaluator.
- (4) If the appointed evaluator does not believe he/she can complete the evaluation and report within the Court's fee structure, the following steps shall be taken:
  - i The evaluator shall contact counsel and advise why the report cannot be completed within the standard fee structure, and provide an estimate of the amount required to complete the evaluation and report;
  - ii If the defense attorney agrees that the additional work is necessary, the evaluator must submit the Request for Additional Funds form to the Judge.

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### **d. Juvenile Division: EC1017**

Defense Counsel will submit to the Court a Declaration and Order re Appointment of Evaluator pursuant to EC 1017. If the evaluation is so ordered, Counsel will carry the order to the Clerk's Office where the next evaluator on the list will be assigned. This name will be entered on the Court Order. Appointment of evaluators shall be made on a rotational basis.

- (1) Upon receipt of the letter and appointment packet, the evaluator shall contact the defense attorney to determine the timeline for receipt of report. The time for receipt of report shall not exceed 10 court days.
- (2) Upon receipt from a defense attorney of an order granting a motion for appointment of a forensic evaluator under 1017 of the Evidence Code, the Clerk's Office shall file/retain the original order; assign the next evaluator on the Court's list, and enter the name of the appointed evaluator on the order.
- (3) Counsel will mail a certified copy of the order of appointment along with copy of the police report to the evaluator.
- (4) If the appointed evaluator does not believe he/she can complete the evaluation and report within the Court's fee structure, the following steps shall be taken:
  - i The evaluator shall contact counsel and advise why the report cannot be completed within the standard fee structure, and provide an estimate of the amount required to complete the evaluation and report;
  - ii If the defense attorney agrees that the additional work is necessary, the evaluator must submit the Request for Additional Funds form to the Judge.
- (5) If the appointed evaluator has previously prepared a report for the minor, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will vacate the appointment and another evaluator on the list will be appointed.

### **e. Adult Division: Penal Code Sections 1026-1027 Not Guilty by Reason of Insanity**

- (1) When the defendant pleads not guilty by reason of insanity, the Court must select and appoint two, and may select and appoint three, psychiatrists or licensed psychologists who have at least 5 years of

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post-graduate experience in the diagnosis and treatment of emotional and mental disorders, to examine the defendant and investigate his/her mental status.

- (2) Upon entry of a not guilty by reason of insanity plea, the Supervising Criminal Court Judge shall appoint two forensic evaluators to investigate the defendant's mental status. If the case is not before the Supervising Judge at the time of entry of plea, the case will be continued to the next After Arraignment Calendar for appointment of evaluators.
- (3) Upon appointment by the Court, the courtroom clerk shall mail the evaluators appointment packets. Reports are to be received no later than 25 calendar days and calendared for no later than 30 calendar days from the date of appointment.
- (4) An evaluator submitting a late report shall fax or email a memorandum to the Court Forensic Evaluator Program Coordinator specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court's file for that evaluator.
- (5) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the courtroom clerk immediately. The courtroom clerk shall notify the Supervising Criminal Division Judge, the evaluator's appointment will be vacated and another evaluator on the list will be appointed. The courtroom clerk will advise the defense attorney and the district attorney that the appointment has been vacated and another evaluator appointed.
- (6) Date of evaluator appointments, date appointment packet mailed (Non-Clinic) or provided (Clinic), requests for additional time, and receipt of report dates will be tracked by the Court Forensic Evaluator Program Coordinator and made available to court staff as needed.

f. Juvenile Division: Not Guilty by Reason of Insanity (WIC 702.3 (d))

- (1) The procedures set forth in section 1026, 1026.1, 1026.2, 1026.3, 1026.4, 1026.5, and 1027 of the penal code shall be applicable to minors joining a general denial of the conduct alleged of the petition with a plea of not guilty by reason of insanity.
- (2) Evaluators shall be appointed by the Supervising Judge of the Juvenile Justice Division.

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- (3) Seventeen calendar days from the date of the order appointing the evaluator, the competency report will be delivered to the court. The report will be circulated to the parties via an “Ex Parte Review - Receipt of Psychiatric Report” which will be on calendar 18 calendar days from the date of the order appointing the evaluator. The matter will be calendared twenty calendar days from the date of the order appointing the evaluator for a “Parte Competency Review.”
- (4) An evaluator submitting a late report shall fax or email a memorandum to the Juvenile Division supervisor or lead specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court’s file for that evaluator.
- (5) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame, has previously prepared a report for the minor, or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will vacate the appointment and another evaluator on the list will be called
- (6) Date of evaluator appointments, date appointment packet mailed, requests for additional time, and receipt of report dates will be tracked by supervisor or lead and made available to court staff as needed.

g. Adult Division: W&I 6605, W&I 6608

- (1) If a person petitioning the Court for conditional or unconditional release under W&I section 6605 or 6608 is indigent and requests the appointment of an expert, the court shall appoint an expert to examine the person and the expert shall have access to all records concerning the person.
- (2) The courtroom clerk shall mail the evaluator an appointment packet.
- (3) Upon receipt of the appointment packet, the evaluator shall contact the defense attorney to determine the timeline for receipt of report. The time for receipt of report shall not exceed 30 court days.
- (4) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the courtroom clerk immediately. The courtroom clerk shall notify the Supervising

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Criminal Division Judge, the evaluator's appointment will be vacated and another evaluator on the list will be appointed. The courtroom clerk will advise the defense attorney that the appointment has been vacated and another evaluator appointed.

### h. All Other Code Sections

- (1) For all other statutory reports, refer to the language in the code section for information that must be addressed and timeline for report submission.

## 6. STANDARDS FOR REPORT CONTENT

- a. All reports, except EC 1017 reports, may be faxed to Adult: 408-808-6892 or Juvenile: 408-808-6290. Original reports must be filed with the Court. Mailing instructions are included in the appointment letter. The court is in the process of creating an online reporting system, once operational, all reports, except EC 1017 reports, shall be submitted through the online reporting system. These reports will follow the Standard Report Format (See court's website) for use in this Court, and shall contain the following minimal information:
  - (1) Name of defendant and court docket number;
  - (2) The statute authorizing evaluation of the defendant (include in subject line and body of report);
  - (3) Evaluation background details to include:
    - i Place, date, and duration of the examination (see subsection d, below);
    - ii All records and collateral material reviewed;
    - iii A list of all tests administered;
    - iv A statement indicating the defendant was informed of the purpose of the evaluation;
    - v A statement indicating that the defendant was advised that the evaluation is not confidential (except for 1017 reports);
  - (4) A statement of the current legal status, including:
    - i Patient's current legal situation (factual summary of the underlying allegations);
    - ii Date of arrest;
    - iii Specific charges against patient;
    - iv Any findings from previous psychological or psychiatric evaluations.
  - (5) Statement of past legal history;
  - (6) Statement of drug and alcohol history;
  - (7) Indication of pertinent social, educational, developmental, or legal-psychiatric history.
  - (8) Statement on mental status examination;
  - (9) Discussion of findings;

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- (10) Statement of conclusions and recommendations (including any recommendations for further testing or follow-up examinations);
  - (11) Recommendation for the use of anti-psychotic medication.
- b. The evaluator should be familiar with the statute forming the basis of the referral, and the evaluator's findings and conclusions should address the legal question presented.
  - c. The interview of the defendant shall be of a length that would allow the examiner to adequately testify to the conclusions made in the report. Interviews of less than 45 minutes duration should be justified in the reports. (e.g., the client was floridly psychotic and completely unable to cooperate, or was mute.)
  - d. While no minimum or maximum length is required, reports of 8 to 12 pages are considered standard. Reports that are shorter should be justified in the body of text.
  - e. Complex psychological concepts and terms should be defined and explained in the body of the report.

### **7. TESTING STANDARDS**

The court does not require testing for competency reports, however, if testing is necessary to determine competency the court recommends the use of the following tests:

- a. Wechsler Abbreviated Scale of Intelligence – 2<sup>nd</sup> Edition (WASI-II)
- b. Wechsler Adult Intelligence Scale – 4<sup>th</sup> Edition (WAIS-IV)
- c. Wechsler Intelligence Scale for Children – 4<sup>th</sup> Edition (WISC-IV)
- d. Georgia Competency Test
- e. Tool for Real-time Assessment of Information Literacy Skills (TRAILS)

### **8. ELECTRONIC SUBMISSION OF REPORTS**

- a. The Court is in the process of creating an electronic report submission system.
- b. EC 1017 reports will be directly submitted to the appropriate attorney, and will not be submitted through the court's reporting system.
- c. The evaluator will complete the report in the reporting system, and a final report will be automatically generated and submitted to the court upon the Evaluator's completion of the submission process.
- d. Court staff will confirm the case and defendant information prior to allowing County access to the final report.
- e. Santa Clara County legal agencies will be provided one account to retrieve reports, and will be provided a username and password from the Court.

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9. REMUNERATION

The fee schedule for Forensic Evaluators shall be as follows:

**Psychiatrists/ Psychologists**

Evaluation and Report (Flat Rate)	\$350
Evaluation and Report with Testing (Psychiatrists, M.D.)	\$95/hr (2 hours maximum)
Evaluation and Report with Testing (Psychologists, Ph.D.)	\$85/hr (2 hours maximum)
½ Day Testimony	\$250
Full Day Testimony	\$425
Unusual Evaluations	\$95/hr (Psychiatrists) \$85/hr (Psychologists)

*For unusual evaluations, in which the Evaluator wishes to request additional payment, the Evaluator must submit the Request for Additional Funds form, which must be approved by the Judicial Officer prior to submission of invoice.*

10. SUBMISSION OF CLAIMS TO THE COURT FOR SERVICES RENDERED

- a. The evaluator shall submit invoices within 30 days of submission of report. For reports submitted in June, invoices must be submitted by July 7th.
- b. The evaluator shall submit invoices using the Evaluator Claim Form and provide any additional forms or documentation as applicable.
- b. Invoices should be sent to:

For Criminal evaluations:  
Superior Court  
Attn: HOJ Asst. Director  
191 North First Street  
San Jose, CA 95113

For Juvenile evaluations:  
Superior Court  
Attn: Juvenile Justice  
191 North First Street  
San Jose, CA 95113