

FINAL REGULATION TEXT

Guidelines on Court Appointment of Forensic Evaluators

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations

Adopt new article 7.5 and sections 4750 and 4751 to title 9, California Code of Regulations to read as follows.

NOTE: The entire text in sections 4750 and 4751 is new regulatory language shown in plain text.

Article 7.5. Guidelines on Court Appointment of Forensic Evaluators

§ 4750. Definitions.

- (a) “Evaluator” means a psychiatrist or licensed psychologist appointed by a court to provide Forensic Evaluations as defined in this section.
- (b) “Forensic Evaluation” means the assessment of a defendant, ordered by a court, in which the Evaluator opines on a defendant’s competency to stand trial pursuant to Penal Code sections 1369 et seq.
- (c) “Incompetent to stand trial” means that as a result of mental disorder or a developmental disability the defendant is unable to understand the nature of the criminal proceedings against him or her or to assist counsel in the conduct of a defense in a rational manner.
- (d) “Licensed psychologist” means a person licensed as a psychologist by the California Board of Psychology.

(e) "Psychiatrist" means an allopathic physician licensed by the Medical Board of California who has completed a Board-approved residency-training program in psychiatry or an osteopathic physician licensed by the Osteopathic Medical Board of California who has completed a Board-approved residency-training program in psychiatry.

NOTE: Authority Cited: Section 1369, Penal Code. Reference: Section 1369, Penal Code.

§ 4751. Forensic Evaluator Training Requirements.

(a) The court shall appoint a psychiatrist or licensed psychologist to evaluate whether a criminal defendant is incompetent to stand trial. This evaluation shall include: the nature of a defendant's mental disorder; a defendant's ability or inability to understand the nature of the criminal proceedings or to assist counsel in a rational manner in the conduct of a defense; and, if within the scope of his or her license, whether treatment with antipsychotic medication is medically appropriate and likely to restore the defendant to mental competence. In considering an appointment, the court shall appoint an expert who meets the provisions in subsection (1), (2), **or** (3) of this section **and** who meets the provision in subsections (4), if applicable, and (5) of this section, or an expert with equivalent experience and skills.

(1) If a psychiatrist, the psychiatrist shall have a State of California medical license in current status, without any restrictions prohibiting practice, **and** one of the following:

- (A) board certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry;
 - (B) eligibility for board certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; **or**
 - (C) completion of a fellowship in forensic psychiatry.
- (2) If a psychologist, the psychologist shall have a State of California psychology license in current status **and** one of the following:
- (A) board certification in forensic psychology by the American Board of Professional Psychology;
 - (B) eligibility for board certification in forensic psychology by the American Board of Professional Psychology; **or**
 - (C) completion of a post-doctoral training in forensic psychology.
- (3) If a psychiatrist or licensed psychologist who does not meet either subsection (1) or (2) above, the expert shall have training or experience consisting of:
- (A) At least 24 hours of specialized forensic training relating to incompetency evaluations.
 - (B) Experience in drafting at least six forensic reports submitted to a court or, if fewer than six, proof provided to the court, prior to appointment, that at least three forensic reports submitted to a

court were reviewed by a peer review panel experienced in the criminal justice system and familiar with the issues of competency.

(4) If evaluating for developmental disabilities, experience in the treatment and assessment of individuals with developmental disabilities.

(5) The expert shall have completed, within the 24 months preceding the appointment, eight hours of the total continuing education courses required by their respective licensing board in forensic evaluation.

NOTE: Authority Cited: Section 1369, Penal Code. Reference: Section 1369, Penal Code.