

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR17-10

Title	Action Requested
Criminal Procedure: Court-Appointed Expert's Report in Mental Competency Proceedings	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.130	January 1, 2018
Proposed by	Contact
Hon. Tricia A. Bigelow, Chair Criminal Law Advisory Committee	Tara Lundstrom, Attorney 415-865-7995 tara.lundstrom@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending the California Rule of Court relating to mental competency proceedings in criminal cases to implement recommendations from the Judicial Council's mental health task forces. This proposal would amend this rule to identify the information that must be included in a court-appointed expert's report on a criminal defendant's competency to stand trial.

Background

The Task Force for Criminal Justice Collaboration on Mental Health Issues issued a final report in April 2011. Among the task force's recommendations was the suggestion that rule 4.130—which addresses mental competency proceedings under Penal Code section 1367 et seq.—be revised. Specifically, the task force recommended revising rule 4.130(d)(2) to identify what information must be included in the court-appointed expert's report.

The Mental Health Issues Implementation Task Force—the task force convened to review the 2011 recommendations and develop a plan for their implementation—issued a final report in December 2015. This final report also included the recommendation to amend rule 4.130(d)(2).

The Proposal

Rule 4.130(d)(2) provides that a court-appointed expert must examine the defendant and advise the court on the defendant's competency to stand trial. It requires submission of the report to the court, counsel for the defendant, and the prosecution.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

This proposal would amend rule 4.130(d)(2) to further require that the report include the following information to assist courts in making competency determinations:

1. A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial, and preparing a resulting report;
2. A summary of the examination conducted by the examiner on the defendant, including a current diagnosis, if any, of the defendant's mental disorder and a summary of the defendant's mental status;
3. A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder;
4. A summary of an assessment conducted for malingering, or feigning symptoms, which may include, but need not be limited to, psychological testing;
5. Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the defendant has the capacity to make decisions regarding antipsychotic medication;
6. A list of all sources of information considered by the examiner, including legal, medical, school, military, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion;
7. A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency;
8. A statement on whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency; and

9. A summary of the examiner’s consultation with the prosecutor and defendant’s attorney, and of their impressions of the defendant’s competence-related strengths and weaknesses.

Alternatives Considered

The committee initially considered whether to recommend omitting the requirement that the report include “[a] summary of the examiner’s consultation with the prosecutor and defendant’s attorney, and of their impressions of the defendant’s competence-related strengths and weaknesses” out of concern for preserving attorney-client confidentiality. Ultimately, it decided to recommend inclusion of this requirement to ensure that the court reviewing the evaluation knows the source of the court-appointed expert’s opinion. The committee reasoned that if an attorney decides to communicate information about a client’s functioning to a court-appointed expert, those communications are not privileged.

Implementation Requirements, Costs, and Operational Impacts

To the extent that the requirements specified in this proposal exceed those currently provided in Penal Code section 1369, this proposal may require a court-appointed expert to conduct further evaluation of a defendant and provide greater detail in the expert report. This proposal may result in greater costs to the courts depending on how they pay for court-appointed experts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rule 4.130, at pages 4–5
2. *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (April 2011), http://www.courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf
3. *Mental Health Issues Implementation Task Force: Final Report* (December 2015), <http://www.courts.ca.gov/documents/MHIITF-Final-Report.pdf>

Rule 4.130 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Rule 4.130. Mental competency proceedings**

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3 **(a)–(c) * * ***

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5 **(d) Examination of defendant after initiation of mental competency proceedings**

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7 **(1) * * ***

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9 **(2)** Any court-appointed experts must examine the defendant and advise the
10 court on the defendant's competency to stand trial. Experts' reports are to be
11 submitted to the court, counsel for the defendant, and the prosecution. The
12 report must include the following:

13
14 **(A)** A brief statement of the examiner's training and previous experience as
15 it relates to examining the competence of a criminal defendant to stand
16 trial, and preparing a resulting report;

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18 **(B)** A summary of the examination conducted by the examiner on the
19 defendant, including a current diagnosis, if any, of the defendant's
20 mental disorder and a summary of the defendant's mental status;

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22 **(C)** A detailed analysis of the competence of the defendant to stand trial
23 using California's current legal standard, including the defendant's
24 ability or inability to understand the nature of the criminal proceedings
25 or assist counsel in the conduct of a defense in a rational manner as a
26 result of a mental disorder;

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28 **(D)** A summary of an assessment conducted for malingering, or feigning
29 symptoms, which may include, but need not be limited to,
30 psychological testing;

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32 **(E)** Under Penal Code section 1369, a statement on whether treatment with
33 antipsychotic medication is medically appropriate for the defendant,
34 whether the treatment is likely to restore the defendant to mental
35 competence, a list of likely or potential side effects of the medication,
36 the expected efficacy of the medication, possible alternative treatments,
37 whether it is medically appropriate to administer antipsychotic
38 medication in the county jail, and whether the defendant has the
39 capacity to make decisions regarding antipsychotic medication;

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41 **(F)** A list of all sources of information considered by the examiner,
42 including legal, medical, school, military, employment, hospital, and

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psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion;

(G) A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency;

(H) A statement on whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency; and

(I) A summary of the examiner's consultation with the prosecutor and defendant's attorney, and of their impressions of the defendant's competence-related strengths and weaknesses.

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(e)-(f) * * *

Advisory Committee Comment * * *