

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SPR11-48**

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Title	Action Requested
Juvenile Law: Qualifications for Experts Evaluating Child's Competency to Stand Trial	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.645(d)	January 1, 2012
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Sidney S. Hollar, 415-865-8974 <a href="mailto:sidney.hollar@jud.ca.gov">sidney.hollar@jud.ca.gov</a>
Hon. Kimberly J. Nystrom-Geist, Cochair	
Hon. Dean Stout, Co-chair	

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### Summary

Welfare and Institutions Code section 709 (Assem. Bill 2212 [Fuentes]; Stats. 2010, ch. 671) requires the Judicial Council to develop and adopt rules for the qualification and appointment of experts who evaluate children when the court or minor's counsel raises the issue of competency to stand trial in any juvenile proceeding. This proposal is intended to meet that requirement and make other minor changes to rule 5.645(d) of the California Rules of Court.

### Discussion

Currently rule 5.645(d) requires the court to stay the proceedings upon a finding that the "child is not capable of understanding the proceedings or of cooperating with the attorney." The rule would be amended to conform the legal standard for juvenile competency to the new statutory language. In addition, it would incorporate the requirement that the court "must," instead of "may," appoint an expert to evaluate the child. The proposed amendment follows the language of section 709 and current case law.

The proposed rule specifies that the expert must be a licensed psychologist or psychiatrist with particular expertise in child development, forensic evaluation, competency standards, and interventions. In formulating this rule, the committee examined the statutes of other states that addressed the issue of expert qualifications in juvenile competency matters, engaged in

*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 These proposals are circulated for comment purposes only.*

discussions with competency evaluation experts, and assessed current local protocols recently developed in California.

Currently 17 states have statutes or rules that address expert qualifications in juvenile competency matters. Eight statutes specify that the court must appoint a psychiatrist or a psychologist to examine the child,<sup>1</sup> four provide that the expert may also be a physician,<sup>2</sup> and two allow for the addition of a designated mental health facility to examine the child.<sup>3</sup> Courts in New Mexico appoint a physician, psychologist, or social worker.<sup>4</sup> Nebraska<sup>5</sup> requires the appointment of a physician, surgeon, psychiatrist, psychologist, or community mental health service program as experts, while Florida<sup>6</sup> allows a mental health professional or the agency for persons with disabilities to serve as examiner. Indiana provides for appointment of an examiner but is silent as to the professional requirements.<sup>7</sup>

Five California superior courts have adopted protocols regarding juvenile competency matters. The Superior Courts of San Diego and Sacramento County require the appointment of a psychologist or psychiatrist, while the San Francisco County court appoints a psychologist, and the Los Angeles and Santa Clara courts use an expert panel.<sup>8</sup>

The amendment also deletes inaccurate cross-references to involuntary-treatment statutes, Welfare and Institutions Code sections 6550– 6552, which caused confusion for courts and attorneys. These sections apply only to children who are wards, and most children in competency matters have not been adjudged to be wards of the court. While section 6550 remains a possible option for a ward found incompetent due to a mental disorder, it does not specifically apply to incompetent youth. Additionally, section 6550 provides obsolete guidance regarding children found incompetent based on developmental disability and provides no direction regarding children found incompetent based on developmental immaturity or other condition.

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<sup>1</sup> Colo. Rev. Stat. § 19-2-1302(4)(b); D.C. Code § 16-2315(b)(2); Ga. Code Ann. § 15-11-152(b); Md. Code Ann. Cts. & Jud. Proc. § 3-8A-17.1(a)(2); N.Y. Fam. Ct. Act § 322.1(1); Vt. Rules for Family Proceedings, Rule 1(i)(2); Wis. Stat. § 938.295(2)(a),

<sup>2</sup> La. Child.Code Ann. art. 834(A)(1); Minn. Stat. Juv. Del. Proc. Rule 20.01, subd.3(C); Tex. Fam. Code § 51.20; Wyo. Stat. Ann. § 14-6-219.

<sup>3</sup> Rev. Kansas Juvenile Justice Code K.S.A. § 38-2348(b)(2); Ariz. Rev. Stat. §. 8-291.02(A).

<sup>4</sup> Neb. Rev. Stat. § 43-258(1).

<sup>5</sup> N.M. Stat. Ann. § 32A-2-17(B).

<sup>6</sup> Fla. Stat. § 985.19(1)(b) 2–23.

<sup>7</sup> IC§31-32-12-1; see also *In re K.G.* 808 N.E.2d 631 (Ind. 2004).

<sup>8</sup> San Diego Protocol for Competency (updated 2009); Sacramento Court-Appointed Juvenile Delinquency Expert Panel Policies and Procedures for Experts (July 2010); San Francisco Policies for Competency Evaluations (December 2010); Los Angeles County Juvenile Court’s Protocol Regarding Juvenile Competency to Stand Trial (2011); Santa Clara Juvenile Competency Manual and Protocol (2011). These local protocols are available at <http://www.courts.ca.gov/3061.htm>

**Specific Comments Requested**

In addition to inviting comment on all aspects of the proposal, the committee requests specific feedback on whether the court should expand the list of accepted experts to other professionals such as social workers.

**Attachment**

1. Cal. Rules of Court, rule 5.645(d)

California Rules of Court, rule 5.645 would be adopted effective January 1, 2012, to read as:

1 **Rule 5.645. Mental health or condition of child; court procedures**

2  
3 (a)-(c)\*\*\*

4  
5 (d) **Doubt as to capacity to cooperate with counsel (§§ 601, 602; Pen. Code, §**  
6 **1367)**

7  
8 (1) If the court finds that there is ~~reason to doubt~~ substantial evidence that a  
9 child who is the subject of a petition filed under section 601 or 602 ~~is~~  
10 ~~capable of understanding the proceedings or of cooperating with the~~  
11 ~~child's attorney,~~ lacks sufficient present ability to consult with counsel  
12 and assist in preparing his or her defense with a reasonable degree of  
13 rational understanding, or lacks a rational as well as factual  
14 understanding of the nature of the charges or proceedings against him  
15 or her, the court must ~~stay suspend~~ the proceedings and conduct a  
16 hearing regarding the child's competence. Evidence is substantial if it  
17 raises a reasonable doubt about the child's competence to stand trial.

18  
19 (A) The court ~~may~~ must appoint an expert to examine the child to  
20 evaluate ~~the child's capacity to understand the proceedings and to~~  
21 ~~cooperate with the attorney~~ whether the child suffers from a  
22 mental disorder, developmental disability, developmental  
23 immaturity, or other condition and, if so, whether the condition or  
24 conditions impair the child's competency.

25  
26 (B) To be appointed as an expert, an individual must be a:

27  
28 (i) Licensed physician who has successfully completed at least  
29 two years of postdoctoral specialty training in a psychiatric  
30 residency program approved by the American Board of  
31 Psychiatry and Neurology (or one year of internship and one  
32 year of such residency training); or

33  
34 (ii) Clinical, counseling or school psychologist who has received  
35 a doctoral degree in psychology from an educational  
36 institution accredited by an organization recognized by the  
37 Council on Postsecondary Accreditation, and who is  
38 licensed as a psychologist.

39  
40 (C) The expert, whether a licensed physician or a psychologist, must:  
41

California Rules of Court, rule 5.645 would be adopted effective January 1, 2012, to read as:

- 1                   (i) have expertise in child and adolescent development,  
2                   including the emotional, behavioral, and cognitive  
3                   impairments of children and adolescents;  
4                   (ii) have expertise in the cultural and social characteristics of  
5                   children and adolescents;  
6                   (iii) have training in the forensic evaluation of children;  
7                   (iv) be familiar with the competency standards and accepted  
8                   criteria used in evaluating competence; and  
9                   (v) be familiar with effective interventions as well as treatment,  
10                  training and programs for the attainment of competency  
11                  available to children and adolescents in California.  
12  
13  
14  
15                  (2) ~~If the court finds that the child is not capable of understanding the~~  
16                  ~~proceedings or of cooperating with the attorney, the court must proceed~~  
17                  ~~under section 6550 and (a)–(e) of this rule. If the child undergoing a~~  
18                  ~~competency evaluation as delineated above is a ward of the court and~~  
19                  ~~the court finds that the child is incompetent based on a mental disorder,~~  
20                  ~~the court must may proceed under section 6550 and (a)–(e) of this rule.~~  
21  
22                  (3) ~~If the court finds that the child is capable of understanding the~~  
23                  ~~proceedings and of cooperating with the attorney, the court must~~  
24                  ~~proceed with the case.~~  
25  
26                  (2) Following the hearing on competence the court must proceed as  
27                  directed in section 709.  
28

## Item SPR11-48 Response Form

**Title:** **Juvenile Law: Criteria for Experts in Competency to Stand Trial Matters**  
(amend Cal Rules of Court, rule 5.645(d))

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*